

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MARYLAND  
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA Criminal No. TDC-17-00195  
5 v. Greenbelt, Maryland  
6 KYLE STEPHEN THOMPSON, January 30, 2019  
7 Defendant. 10:00 a.m.

8 -----/

9 TRANSCRIPT OF SENTENCING  
10 BEFORE THE HONORABLE THEODORE D. CHUANG  
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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6500 Cherrywood Lane  
Greenbelt, Maryland 20770

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1 P R O C E E D I N G S

2 THE CLERK: The matter now pending before this  
3 Court is Criminal Number TDC-17-195, United States of  
4 America versus Kyle Stephen Thompson. We're here for the  
5 purpose of sentencing. Counsel, please identify yourself  
6 for the record.

7 MS. O'MALLEY: Kristi O'Malley, Joseph Baldwin  
8 and Kelly Hayes for the United States and with us at  
9 counsel table is FBI Special Agent Jacqueline Dougher.

10 THE COURT: Good morning.

11 MR. MERCER: Good morning, Your Honor. Steve  
12 Mercer and Isabelle Raquin for Kyle Thompson. Mr.  
13 Thompson is at counsel table with us.

14 THE COURT: Okay. Good morning, counsel. Good  
15 morning, Mr. Thompson. So we are here for a sentencing in  
16 United States versus Thompson. On September 13, 2018, Mr.  
17 Thompson was found guilty after a jury trial of 18 counts  
18 of production of child pornography in violation of Title  
19 18 United States Code, Section 2251(a). I have received  
20 and reviewed the following documents in connection with  
21 today's proceedings. First, the revised presentence  
22 report of November 16, 2018, the government's sentencing  
23 memorandum of January 14, 2019, victim impact statements  
24 submitted by the government, the defendant's sentencing  
25 memorandum of January 14, 2019. The government filed a

1 responsive memorandum on January 22nd. I also have a  
2 letter and an agreement on jurisdiction from January 17th.  
3 Are there any other materials that were submitted?

4 MR. MERCER: Yes, Your Honor. There was  
5 yesterday --

6 THE COURT: Oh, right. Yes. We have a  
7 defendant's reply of January 29th and then I had also  
8 asked for a unedited or the original chart of the videos,  
9 which I think the government submitted as well.

10 MR. MERCER: And there was one letter  
11 attached --

12 THE COURT: The letter came with the filing on  
13 January 29th. One letter from a family member. Correct?

14 MR. MERCER: Yes.

15 THE COURT: Okay. I've received and reviewed  
16 all those materials. Anything else from the government?

17 MS. O'MALLEY: No, Your Honor.

18 THE COURT: Could I just ask? I think the PSR  
19 refers to restitution to be determined. I didn't see  
20 anything in the papers at all about restitution, whether  
21 that's being sought or anything like that. Can you  
22 clarify that?

23 MS. O'MALLEY: Your Honor, we don't have any  
24 information for any particular restitution claims.

25 THE COURT: Okay. And then there's no order of

1 forfeiture. Correct?

2 MS. O'MALLEY: No, Your Honor.

3 THE COURT: Okay. So I have reviewed the  
4 presentence report. And, first of all, Mr. Mercer, Ms.  
5 Raquin, have you and your client had the opportunity to  
6 read and review the report with your client and discuss  
7 it?

8 MR. MERCER: Yes, we have, Your Honor.

9 THE COURT: And as I understand it, there are  
10 remaining objections to the acceptance of responsibility  
11 or the lack of acceptance of responsibility, downward  
12 adjustment to the enhancements for sadistic behavior and  
13 the way the grouping has occurred. Are those the only  
14 remaining objections to the report?

15 MR. MERCER: Yes, Your Honor.

16 THE COURT: And I will -- does anyone have  
17 anything to add on any of those points or should I just  
18 make rulings on those based on the papers?

19 MS. O'MALLEY: Your Honor, we're fine to submit  
20 on the papers. But if defense counsel argues, obviously,  
21 we would request an opportunity to respond.

22 MR. MERCER: Your Honor, I have a few brief  
23 comments.

24 THE COURT: Okay. And I have a couple of  
25 questions on a couple of these, but not extensively. But

1 go ahead.

2 MR. MERCER: First, on 3E1.1, acceptance of  
3 responsibility, I would just -- I had referenced in the  
4 memorandum the jail calls, which occurred on January, I'm  
5 sorry, April 19, 2017, which was two days after  
6 Mr. Thompson was arrested and the summary of that call in  
7 particular is in ECF Document 85, which was the  
8 government's motion regarding defendant's jail calls and  
9 that appears at page 4 where I'm quoting, "they have  
10 videos of me and an alleged" -- and bracketed out age for  
11 privacy reasons -- "year old", "I can't say on the phone,  
12 but what you think it is, it is." And --

13 THE COURT: Who was this conversation with  
14 again? Remind me.

15 MR. MERCER: With his father.

16 THE COURT: Okay.

17 MR. MERCER: So ordinarily, of course,  
18 acceptance of responsibility is not available when a  
19 defendant proceeds to trial.

20 THE COURT: I'm just trying to pull up that  
21 document that you are referring to. One moment. 85, is  
22 that what you said?

23 MR. MERCER: Yes. ECF-85 --

24 THE COURT: Um-hum.

25 MR. MERCER: -- filed August 28, 2018. And I

1 misspoke, Your Honor, with the date. It's March 19th of  
2 2017, which was two days after Mr. Thompson's arrest.

3 THE COURT: Okay. Go ahead.

4 MR. MERCER: So understanding that ordinarily  
5 acceptance of responsibility is not available to a  
6 defendant that holds the government to its burden of  
7 proof. I would note, however, that the official  
8 commentary does recognize that there are situations and I  
9 think the example provided in the commentary is apt to the  
10 circumstances here where the only way for the defendant,  
11 for Mr. Thompson to preserve his constitutional issues to  
12 the procedure required him to go to trial and the conduct  
13 of that trial, he did not raise any frivolous defense  
14 about any factual matters.

15 As the Court will recall, the primary contention  
16 at trial had to do with the mens rea component and the  
17 meaning of primary purpose or motivating purpose or  
18 dominating purpose. But it was not a -- the purpose of  
19 the trial I think is clear that it was to preserve those  
20 constitutional challenges, which the official commentary  
21 does recognize as a valid reason. That doesn't cut  
22 necessarily against acceptance of responsibility. The  
23 focus being, of course, on the acceptance of  
24 responsibility that occurs before a trial and that's why  
25 we point to the jail call that the government had proposed

1 to admit, but then didn't. And, of course, the proceeding  
2 in state court where there has been a plea of guilty to  
3 ten counts --

4 THE COURT: That was after the verdict in this  
5 case though. Correct?

6 MR. MERCER: Yes. It was after the verdict in  
7 this case. But I think it was an understanding of -- I  
8 don't know that that timing really speaks to a lack of  
9 acceptance of responsibility because that was anticipated,  
10 hopefully, that the state to preserve the constitutional  
11 issues on the state side also, that there would not have  
12 to be the necessity of going through a trial. But that it  
13 would be resolved along the same lines of preserving that  
14 constitutional challenge on the state side. So I don't --  
15 I just don't want the Court to have the impression that  
16 there was an attempt to sort of game the system by seeing  
17 what happens on the federal side at trial before resolving  
18 on the state side.

19 THE COURT: Well, I thought there was a pretty  
20 clear decision that everyone including the Court made here  
21 that the federal trial was going to go first --

22 MR. MERCER: Yes.

23 THE COURT: -- I think. But again that -- I  
24 mean that was a decision. Obviously, there could be  
25 various motives for that and I know one of them was about

1 incarceration, so forth. But okay. I understand what you  
2 are saying though.

3 MR. MERCER: So --

4 THE COURT: Okay.

5 MR. MERCER: -- we would accept a request at  
6 reduction of the offense level because the defendant  
7 clearly demonstrating acceptance of responsibility and  
8 there will be no frivolous dispute under 1 -- and also,  
9 Your Honor, just there's no dispute under 1B1.3 that's  
10 frivolous at all about relevant conduct that the Court is  
11 considering here. So that would also cut against  
12 acceptance of responsibility and that I think as the Court  
13 can see from our submissions, we're not raising any  
14 frivolous dispute over relevant conduct.

15 THE COURT: Okay. So let me just ask you a  
16 couple of questions since we are here on some of the other  
17 objections. On the one for sadistic behavior and this  
18 maybe is a question for both sides, maybe I'm missing  
19 something, but under Guideline 2G2.1(b)(4)(b), it appears  
20 that the enhancement can be for sadistic behavior. It can  
21 also be for violence in the videos. No one really talked  
22 about that too much. And then it also can be if the  
23 victim was an infant or a toddler. And it certainly seems  
24 as if in this case, the victims were toddlers. So why  
25 isn't that enough to get this enhancement without even



1 getting to the question of whether the behavior was  
2 sadistic?

3 MR. MERCER: Well, two reasons, Your Honor. One  
4 under A, sadistic or masochistic conduct or other  
5 depictions of violence, I think the depiction of violence  
6 narrows the sadistic or masochistic conduct. So it  
7 further qualifies it. So it's a subset of sadistic or  
8 masochistic conduct because otherwise it would be covered  
9 under 2G2.1(b)(2)(B) with respect to conduct described  
10 under 18 U.S.C., 2241(a) or (b), which is aggravated forms  
11 of sexual contact.

12 With regard to infant or toddler, as far as my  
13 research goes, toddler is under 4 and so I don't believe  
14 this is a --

15 THE COURT: Well, a lot of these, the infant was  
16 under 4 for a lot of these or I mean the victims were. At  
17 least Victim 1 was for much of this. And what case says  
18 that 4 is the cutoff? I didn't -- neither side really  
19 raised that question. So I didn't know if you looked into  
20 it.

21 MR. MERCER: Your Honor, I'll check. I did find  
22 one case that was discussing toddler and it may be the --

23 THE COURT: I mean I don't think it's in the  
24 commentary. I didn't see it there. So --

25 MR. MERCER: No. I didn't see any commentary on

1 toddler. But I think the common dictionary definition for  
2 toddler would not encompass the victims here.

3 THE COURT: Even the two-year-old victims or  
4 three-year-old victims?

5 MR. MERCER: Well --

6 THE COURT: Does the government have anything on  
7 this issue?

8 MS. O'MALLEY: I have plenty on this issue, Your  
9 Honor, which I'm more than happy to address.

10 THE COURT: Okay. Well, save it for -- I'll get  
11 my questions with Mr. Mercer and then we'll -- so if you  
12 have a case on that that says there's a cutoff at 4 and  
13 when you say 4 meaning under 4 as opposed to 4 before 5  
14 because I think the way I read this, the facts here, I  
15 think the victims were all safely under 5 during all of  
16 these things. I think at one point, one of the victims is  
17 4. I think Victim 3 says it on the video and I think we  
18 also have information on birth years and we actually have  
19 the specific birth date of Victim 1 and Victim 1 was under  
20 3 for several of these videos and then was certainly under  
21 4 for most if not all of the rest. So I think there is an  
22 issue there. And I'm just trying to understand why that  
23 doesn't at least address some of the counts if not all the  
24 counts.

25 MR. MERCER: Well, Your Honor, to be candid,

1 too, the issue not having been raised in the PSR, I didn't  
2 go back to check to see if the additional toddler was an  
3 amendment that postdated any events here. So I would just  
4 want to double check that.

5 THE COURT: Okay.

6 MR. MERCER: But I --

7 THE COURT: The events here were what year  
8 again?

9 MR. MERCER: 2015. So and I was just a little  
10 concerned about that because in looking at a decision from  
11 around 2012, it didn't seem to be addressing a  
12 harmlessness analysis based on toddler and so I just  
13 wasn't -- I just put it further down on my list because it  
14 hadn't been raised here.

15 THE COURT: No. I understand. And just a quick  
16 look at the book from 2014 doesn't show that enhancement.  
17 So maybe you are right that it's -- the conduct predates  
18 that. Although we usually follow the one book policy. I  
19 don't know which book we are using if we are going to  
20 stand on that.

21 Okay. So I understand that point. And then I  
22 think those are the only questions I have for you, Mr.  
23 Mercer, on any of these.

24 MR. MERCER: Well, I did want to just expand on  
25 the grouping and the stacking. The grouping under 3(d),

1 we make the argument to the Court that there's a composite  
2 harm here such that the account should be grouped by  
3 victim. I would -- and that is how we arrive at a offense  
4 level of 40 is through grouping based on victim and  
5 composite harm --

6 THE COURT: well, would you agree though if  
7 there is any kind of sadistic behavior, doesn't that take  
8 us to 44 just on at least one count and we would never get  
9 down to 40 at that point. Right?

10 MR. MERCER: well, yes.

11 THE COURT: So you are assuming that you are  
12 successful on all of that?

13 MR. MERCER: Correct.

14 THE COURT: Okay.

15 MR. MERCER: Right. So yes, I have to be  
16 successful on acceptance of responsibility, on the  
17 sadistic enhancement and on the grouping to under 3D1 of  
18 the different offenses for Victim 1, grouping together  
19 based on it being a continuing series of events resulting  
20 in a composite harm to the victim.

21 That said, Your Honor, I also would submit that  
22 the PSR's approach to grouping, which is no grouping at  
23 all, does not recognize that there can be grouping by  
24 dates. So, for example, with regard -- there is only one  
25 count of conviction for Victim 2, one count for Victim 3,

1 there are 16 for Victim 1. However, Counts Three and Four  
2 occur on the same date, 9-27-2015. Count Six, Seven,  
3 Eight, Nine, Ten occur on the same date, March 4, 2016.  
4 Counts Eleven, Twelve occur on the same date, March 5th,  
5 2016 and Counts Sixteen, Seventeen and Eighteen occur on  
6 the same date of January 28, 2017. So I think even if the  
7 Court doesn't accept our composite harm argument, that  
8 there should only in effect be one count per victim.

9 I also believe it's -- the Court should consider  
10 one count for Victim 2, one count for Victim 3 and eight  
11 counts for Victim 1 as opposed to 16 counts because there  
12 are multiple counts occurring on the same day, which I  
13 believe a fair reading of the commentary would be that is  
14 that the same event notwithstanding the camera may be  
15 turned on and off, but it's all occurring on the same day.

16 Now why is that important? It's important I  
17 think as it relates to our stacking argument, Your Honor.  
18 It doesn't get us below 43 if you group Victim 1 to 8  
19 instead of 16 counts. But I don't think it is irrelevant  
20 either because the Court still has to decide -- and I  
21 think this is really where the core of the dispute is --  
22 what is life. And we're advocating for a position that we  
23 believe is consistent with the commissions of policy  
24 statements --

25 THE COURT: Okay. I don't want to get into the

1 overall sentencing. I'm just talking about the guidelines  
2 right now.

3 MR. MERCER: Yes. I understand.

4 THE COURT: You will have time to talk about  
5 that later.

6 MR. MERCER: I understand and I appreciate that.  
7 I just wanted to be candid with the Court that even if we  
8 group to for victim 1 to 8 counts instead of 16 counts,  
9 that doesn't get us below 43. But I just want to alert  
10 the Court that we don't consider that to be, you know,  
11 irrelevant and we can discuss the reasons why later.

12 And the other issue about stacking, Your Honor,  
13 however the Court decides to group --

14 THE COURT: You are getting into the sentence  
15 now, Mr. Mercer.

16 MR. MERCER: Okay.

17 THE COURT: Let me hear from the government now.  
18 So a couple of questions. Unless you want to add  
19 anything, I don't think I need anything more on acceptance  
20 of responsibility. On the sadistic behavior, I guess Mr.  
21 Mercer may be correct. It looks as if on the older books,  
22 this toddler enhancement wasn't there. What's your view  
23 on that question?

24 MS. O'MALLEY: So, Your Honor, I guess it  
25 depends on which book you're looking at. If you're

1 looking at the book for charges because in the 2016, 2017  
2 book, it was there. But in the 2014 book, it was not.  
3 So --

4 THE COURT: Right.

5 MS. O'MALLEY: -- it came into being before the  
6 last acts were committed and before the final charge. But  
7 I can address both issues, Your Honor, in terms of if we  
8 were to assume that the infant/toddler guideline applied,  
9 I just would note that there are videos where Victim 1 is  
10 wearing a pull-up and there's a video where Victim 2 is --  
11 has a pacifier.

12 THE COURT: No. I'm familiar with that and I  
13 guess the question is do you have anything on this --  
14 well, is there some age cutoff in the case law or is this  
15 somewhat loose in terms of how one defines --

16 MS. O'MALLEY: Your Honor, I haven't done the  
17 research to determine whether there's a particular age  
18 cutoff for the -- when someone is an infant or toddler. I  
19 would implore the Court though to find that this is in the  
20 heartland of sadistic conduct. And so the Court doesn't  
21 even need to consider the fact that these were also very  
22 likely toddlers.

23 This is clearly sadistic conduct and depictions  
24 of violence. I cited in my papers decisions from every  
25 single circuit that has found that just the act of an

1 adult male penetrating a child this young is per se  
2 sadistic.

3 THE COURT: So I'm with you on that. I guess  
4 the question I have is I don't believe -- and I'm working  
5 primarily off the descriptions in the unedited version  
6 that was not presented to the jury and I'm assuming there  
7 is no objection to that content from either side.

8 Correct, Mr. Mercer?

9 MR. MERCER: No. And I believe the --

10 THE COURT: Okay. But I don't see -- I mean I  
11 see cases as you've described. I've also seen cases that  
12 any kind of penetration with some foreign object would  
13 also count. But I don't believe that every video here has  
14 that. Am I correct or not?

15 MS. O'MALLEY: I think a large number of them  
16 do. I think there are videos early on where there is the  
17 penis close to the buttocks or in the buttocks. It's not  
18 clear whether there is penetration. There is though even  
19 in videos where there is oral sex, there is bondage of the  
20 child being tied or arms being --

21 THE COURT: Okay. Well, then on the oral sex  
22 point, are there cases saying that's sadistic? I felt  
23 like that was not necessarily covered in the other cases  
24 that you've referenced.

25 MS. O'MALLEY: So I think oral sex in and of



1     itself may not be under normal circumstances, but we're  
2     not dealing with just oral sex here.  We're dealing with  
3     tying a child's arms to her waist with a tie from a bath  
4     robe in one of the videos --

5             THE COURT:  I am familiar with that one, too.  
6     Yes.

7             MS. O'MALLEY:  -- and forcing the penis into her  
8     mouth to the point where she can't breathe.  There's other  
9     videos where the defendant forces his penis into her mouth  
10    where she can't breathe.  I think that crosses the line  
11    into sadistic, especially because the defendant is also  
12    physically abusing victim 1 on numerous occasions during  
13    those videos.  Is not just engaging in the horrific sexual  
14    abuse of her, but he throws her across the bed, slaps her,  
15    pulls her hair while doing this and this is all the  
16    classic heartland of sadistic.

17            THE COURT:  Right.  But I'm assuming and I could  
18    be wrong that -- you are comfortable with me working off  
19    the descriptions --

20            MS. O'MALLEY:  Absolutely.

21            THE COURT:  -- for my assessment.  Okay.  So I'm  
22    not sure and I, frankly, don't think it matters from a  
23    mathematical standpoint.  But I do think that -- Mr.  
24    Mercer, it's her turn right now.

25            MR. MERCER:  Oh, I'm sorry.

1           THE COURT: So just chill out. I'm not sure  
2           that I would necessarily say that every description  
3           meets -- at least makes it clear by a preponderance of the  
4           evidence that the standard is met. That's why I was  
5           asking about the toddler issue. And I guess it's a  
6           complicated question with the guidelines changing in the  
7           middle of the conduct. Again, my general understanding is  
8           we choose one book and we go with it for the case and I  
9           don't know if it -- until this, I didn't think it  
10          necessarily mattered. But does it matter and which book  
11          would we be using?

12          MS. O'MALLEY: My understanding is that if one  
13          of the -- if the earlier guidelines would be beneficial to  
14          the defendant, that that's the guidelines the Court should  
15          use. But again, we have conduct here that both predates  
16          and postdates --

17          THE COURT: Right.

18          MS. O'MALLEY: -- the 2014 guideline --

19          THE COURT: And I guess the question then is  
20          whether -- is there any other reason not to use the  
21          earlier book?

22          MS. O'MALLEY: The only distinction would be the  
23          infants and toddlers. Everything else is the same.

24          THE COURT: Or possibly the fine amounts, things  
25          like that, if that changes.

1 MS. O'MALLEY: Fair enough.

2 THE COURT: Okay. And then you agree certainly  
3 that violence by itself, I think that is in the old  
4 guideline as well.

5 MS. O'MALLEY: Yes.

6 THE COURT: Other depictions of violence whether  
7 we call it sadistic or whether you just call it violence,  
8 that would qualify. Correct?

9 MS. O'MALLEY: Yes.

10 THE COURT: Okay. So I did want to also ask  
11 about the grouping question. And you cited cases and we  
12 found cases that certainly state that when there's the  
13 same victim and conduct on a different day, then it can  
14 and usually is a separate group. The application notes  
15 refer to rape of a victim on one day and another one on a  
16 different day. Those are different groups most of the  
17 time.

18 But I didn't see a case that said if it's on the  
19 same day how you treat that necessarily. Did you have  
20 anything in that regard?

21 MS. O'MALLEY: Your Honor, I have had several  
22 judges in this courthouse and in Baltimore apply that  
23 guideline where they -- we had several instances of abuse  
24 on the same day or in the same weekend and each one was  
25 treated as a separate instance of harm.

1 THE COURT: Is there a case that says that, a  
2 published case?

3 MS. O'MALLEY: I can't say other than the cases  
4 I've cited, Your Honor, whether it says. What I will say  
5 is that it's an academic exercise because there are still  
6 more than five days of abuse --

7 THE COURT: No. I agree with you completely on  
8 that.

9 MS. O'MALLEY: -- of Victim 1. She was abused  
10 on eight separate days in six separate weekend visits and  
11 what is absolutely horrific and the reason that I think it  
12 is separate instances of harm is there are several  
13 instances on those weekends where she visited where she  
14 was abused late on a Saturday night and then woken up  
15 early on a Sunday morning and abused again. And, Your  
16 Honor, I don't think there's -- there shouldn't be any  
17 question that those are separate instances of harm,  
18 separate abuses.

19 THE COURT: Okay. And again, and I think it's  
20 pretty clear that absent something extraordinary, that the  
21 different date things, there's no real issue with that.  
22 But then, for example, I believe there are several  
23 examples where -- just taking, for example, Counts Eleven  
24 and Twelve, the videos are four minutes apart and I think  
25 there's at least a strong argument to be made that it's

1 really the same incident. The video must have stopped in  
2 the middle and was restarted. Is it still your position  
3 that those are separate harms that need to be grouped  
4 separately?

5 MS. O'MALLEY: Your Honor, I can't say whether  
6 the conduct stopped and then started again or whether it  
7 continued and the video started again. Obviously, I  
8 wasn't there. So I can't say for sure.

9 THE COURT: Well, you've seen the videos. You  
10 have --

11 MS. O'MALLEY: Certainly.

12 THE COURT: And in some of these cases, even  
13 though there's a gap, I mean the video is a certain number  
14 of minutes long. So from the end of the video until the  
15 beginning of the next one is really not much time. And so  
16 I want to see if your position is still that those are  
17 separate for purposes of grouping.

18 MS. O'MALLEY: I suppose I would analogize it to  
19 if someone went into the same bank three times in one day,  
20 this would be treated as three separate units and three  
21 separate harms, even though it's the same bank, same --

22 THE COURT: And I could see that and I think  
23 that's a fair argument. I'm sort of saying in some of  
24 these cases, it appears as if given the time proximity and  
25 the descriptions, that it's actually the same visit to the

1 bank. It's just that the video starts, stops and then  
2 starts again. But I mean would you agree with that or do  
3 you feel like no matter what, if the video stops, it's a  
4 separate harm?

5 MS. O'MALLEY: I mean all I can tell you, Your  
6 Honor, is that I have consistently for years advocated for  
7 and had multiple courts find that --

8 THE COURT: That's not what I'm asking. I'm  
9 asking as a factual matter and again other cases might  
10 have been different, but here you've got videos that are  
11 four minutes apart, nine minutes apart and then in some  
12 cases, that again the length of the video. And the  
13 earlier one pretty much covers most of the time between  
14 the videos. So it just seems fair to me to look at the  
15 question of whether this really is just the video stops in  
16 the -- it stopped and turned off and turned on again  
17 whether it's -- I mean in the trial we heard testimony  
18 about repositioning the camera, whathaveyou. It seems as  
19 if we're painting with a very broad brush stroke if we're  
20 just saying every count every time the video stops, that  
21 that's a separate harm.

22 And again I think you heard me say this in other  
23 points in the case, I'm just not persuaded by the notion  
24 of someone saying, well, this is how we've always done it  
25 as being the answer. So I take it then it's your position

1 that even if the camera stops and there's, you know, 30  
2 seconds or a minute in between, that is a separate harm.  
3 That's your position.

4 MS. O'MALLEY: My position is that when the  
5 child had to endure several separate sex acts within, you  
6 know, those separate videos, that those are separate  
7 incidences of harm. But I would again reiterate to the  
8 Court that I think it's academic because there clearly are  
9 more than five and unfortunately, the sixth on up is a  
10 freebie. There's no additional punishment for that.

11 THE COURT: I know that's how it works.

12 MS. O'MALLEY: So I think in this case there's  
13 no question that there is again six separate weekend  
14 visits, eight separate days. I think there shouldn't be  
15 any question that sometimes these visits are months apart.  
16 They span almost two years in time. So I don't think  
17 there should be any question in the Court's mind that the  
18 separate days at a minimum are separate instances of harm  
19 and that resolves the issue as far as I'm concerned  
20 because we already get to five units in that case.

21 THE COURT: Okay. And similarly, I think it's  
22 correct then that -- you would agree that it's an academic  
23 exercise as to the sadistic enhancement in that it really  
24 only takes one count with that to get to Level 44 and at  
25 that point, the only real impact of whether the other

1 counts have that enhancement or not is in the grouping,  
2 but because of the way the grouping works, those extra  
3 five points for grouping are going to happen one way or  
4 the other. would you agree that they are really -- as a  
5 practical matter, it doesn't lead to any difference in the  
6 numbers. Right?

7 MS. O'MALLEY: Yes, Your Honor.

8 THE COURT: So long as there's at least one  
9 count that qualifies.

10 MS. O'MALLEY: Yes, Your Honor. And I think  
11 there is no question here that there's more than one.  
12 There's a number.

13 THE COURT: I completely agree with you on that.

14 MS. O'MALLEY: So I think the majority I think  
15 do have sadistic conduct. I would agree with you that  
16 based on the descriptions and based on the videos  
17 themselves that there are a couple at least that -- if you  
18 were looking purely at the conduct, although I think you'd  
19 have to factor in the age of the child, the fear they were  
20 placed in, the pain that they were put in in addition in  
21 factoring in sadistic. But even if the Court were to  
22 discount a couple of the videos and say that doesn't  
23 qualify --

24 THE COURT: I agree with you.

25 MS. O'MALLEY: -- it wouldn't make any



1 difference.

2 THE COURT: And I think probation actually did  
3 not apply it to Count Nine I think. So again it makes no  
4 difference in the math I don't think. So --

5 MS. O'MALLEY: Certainly.

6 THE COURT: You wanted to add something?

7 MS. O'MALLEY: Sorry, Your Honor. One moment on  
8 the terms of the guideline book of which one we're  
9 supposed to use.

10 THE COURT: Yes.

11 MS. O'MALLEY: Mr. Baldwin just hinged on  
12 something. Do you want to point it out?

13 MR. BALDWIN: Your Honor, actually it was  
14 pointed out by probation. But in application notes to  
15 1B1.11, it's on page 46 of the current book. But it says  
16 essentially a defendant -- it gives an example. If the  
17 defendant is sentenced to January 1992 for bank robbery  
18 committed --

19 THE COURT: Sorry. What page are you on again?

20 MR. BALDWIN: It's on page 46.

21 MS. O'MALLEY: 45.

22 MR. BALDWIN: Excuse me. It starts on 45 is  
23 where the commentary starts.

24 THE COURT: Okay. Go ahead.

25 MR. BALDWIN: And it says -- the language begins

1 if the defendant is sentenced in January 1992. It talks  
2 about one bank robbery being committed in October 1988 and  
3 one committed in November 1991. The later, the  
4 November 1991, November's guidelines manual should be  
5 used. So it talks about using the later manual.

6 THE COURT: I'm sorry. You're in 1B1.11?

7 MR. BALDWIN: Yes.

8 THE COURT: Background section, bottom of page  
9 45?

10 MR. BALDWIN: 1B1.11, Your Honor.

11 THE COURT: Right. And then where were you  
12 reading from?

13 MR. BALDWIN: Page 46.

14 THE COURT: Which paragraph?

15 MR. BALDWIN: It's the one that begins  
16 "moreover."

17 THE COURT: Okay.

18 MR. BALDWIN: And then it's seven lines down.  
19 And then the next paragraph, it says summary.

20 THE COURT: Um-hum. It also says on the bottom  
21 of page 45, if the defendant is convicted of two  
22 offenses -- well, actually, I guess it's in the -- it's in  
23 the guideline itself. Subsection 3. "If the defendant is  
24 convicted of two offenses, the first committed before and  
25 the second after a revised edition of the guidelines

1 manual became effective, the revised edition of the  
2 guidelines manual is to be applied to both offenses." So  
3 that seems to address your issue. And I guess the last  
4 offense in this case was January of 2017. So that would  
5 mean the 2016 book would have been in play. And it does  
6 include the infant or toddler enhancement.

7 Okay. So I think I'm prepared to rule on the  
8 enhancement. You had one followup point, Mr. Thompson --  
9 I mean I'm sorry -- Mr. Mercer?

10 MR. MERCER: Two quick points. One, Your Honor,  
11 about the infant/toddler and which guidelines manual to  
12 use, under 1B1.11(b)(1), to the extent that there's ex  
13 post facto concerns, that's going to trump the (b)(3)  
14 guidance about when you have straddling of offenses. And,  
15 you know, I wasn't -- because the toddler enhancement  
16 wasn't asserted here, I didn't come prepared to address  
17 any potential ex post facto issues. But I don't believe  
18 that the commentary about the straddling scenario is going  
19 to trump an ex post facto analysis and the commentary  
20 seems to support that.

21 And I just had one other brief point, Your  
22 Honor, about the offense enhancement --

23 THE COURT: Okay.

24 MR. MERCER: -- for sadomasochistic because the  
25 acts are horrific. No one -- we are not diminishing that.

1 But there is under 2G2.1, there is an enhancement for  
2 aggravated sexual contact under (B)(2)(b) and that would  
3 only result in a -- that would result in a four-level  
4 enhancement, but with the sadistic enhancement, it's a  
5 total of 6. So two additional points. And so sadistic  
6 must mean something more than the aggravated sexual act  
7 itself. And we believe it does mean something different  
8 and that the purpose of the violence must be to obtain  
9 sexual gratification and we would simply submit, Your  
10 Honor, that the videos do not depict sexual gratification  
11 or causing pain for sexual gratification and that's --

12 THE COURT: Okay. I understand. So take this  
13 step by step. On the acceptance of responsibility issue,  
14 the probation -- presentence report does not provide any  
15 downward adjustment for acceptance of responsibility. The  
16 defense is arguing that that downward adjustment is  
17 warranted because the defendant effectively went to trial  
18 to preserve his right to appeal the suppression motion  
19 ruling. Arguably admitted the conduct in a private, but  
20 recorded conversation with his father. And I think  
21 everyone's acknowledged that under 3E1.1, Application Note  
22 2, acceptance of responsibility reductions are available  
23 only in rare situations when a defendant goes to trial.

24 It is true that the one identified by the  
25 defense to preserve a constitutional right with respect to

1 appealing a suppression motion is one of the recognized  
2 rare situations that could apply, but that rationale going  
3 to trial to preserve an appeal is only one factor.

4           There are multiple considerations listed in  
5 Application Note 1 to 3E1.1 and on virtually all of them,  
6 Mr. Thompson has not done what is needed to demonstrate  
7 acceptance of responsibility. He did not truthfully admit  
8 the conduct comprising the offense of conviction, although  
9 he did arguably have his lawyers concede certain points at  
10 trial. Maybe this private phone call, which I don't  
11 believe he necessarily thought was being made public to  
12 anybody, he may have acknowledged that certain things were  
13 depicted, but he certainly didn't admit to anything  
14 directly. He vigorously contested a key element of the  
15 offense, which was the purpose of his production of child  
16 pornography. So in that sense he didn't accept  
17 responsibility.

18           He also didn't voluntarily terminate or withdraw  
19 from the criminal conduct. He was actually arrested by  
20 law enforcement to prevent him from engaging in it  
21 further. He didn't voluntarily pay any restitution. He  
22 did not voluntarily self-surrender. He didn't voluntarily  
23 assist the authorities in recovering the instruments of  
24 the offense. They were actually seized against his will  
25 through a search warrant. There's no evidence of

1 post-offense rehabilitation efforts. And as is plainly  
2 obvious whether before, during or after the trial, there's  
3 never been any expression of remorse or contrition. So  
4 under the facts of this case, the downward adjustment is  
5 not going to be given. I will overrule the objection and  
6 sustain the probation officer's assessment of that  
7 grounds.

8 On issue of the sadistic behavior enhancement  
9 under 2G2.1(b)(4), at a first level, as I mentioned  
10 earlier, if the infant/toddler exception applies, I think  
11 that basically encompasses all of the conduct here. One  
12 of the victims was two years old for at least three of the  
13 counts, three years old for the vast majority, just turned  
14 4 for some of the last ones. I think the others were all  
15 4 and below. Whether the four-year-old cutoff exists or  
16 not, I haven't looked into specifically. But all of these  
17 were right at 4 or lower and so I think it would apply.

18 Now again since no one keyed up this issue, I  
19 don't know if we've all completely run into ground as to  
20 which book would apply. I think Mr. Baldwin points out  
21 that in general we should apply the later book, 2016. But  
22 it's a fair point by Mr. Mercer that there arguably is an  
23 ex post facto issue here. Probably not because I don't  
24 think it's going to make any difference in the guidelines.  
25 But out of an abundance of caution, I'm not going to rely

1 on the infant/toddler basis for an enhancement.

2 And so then we look at whether any of the  
3 conduct in these videos was sadistic or depicted other  
4 forms of violence. And the enhancement certainly applies  
5 to many, if not most of these counts. Under U.S. versus  
6 Burgess, 684 F.3d 445 (Fourth Circuit 2012), vaginal  
7 intercourse with a five-year old child was deemed to  
8 necessarily cause pain and is sadistic for purposes of  
9 this enhancement. Under U.S. versus Osbourne, 35 Federal  
10 Appendix 61 (Fourth Circuit 2002), penetration of a young  
11 child by an adult or foreign object is likewise deemed  
12 sadistic. And out of circuit cases refer to anal  
13 intercourse with a young child is also per se sadistic.

14 And between that fact and the fact that some of  
15 these videos also depict violence, whether it's striking  
16 the child, whether it's forcing a bound child, forcing  
17 oral sex upon a bound child and pushing that child or  
18 whether it's other violence, the vast majority of these  
19 safely qualify. Again out of an abundance of caution, I'm  
20 not going to make that finding for all of these counts. I  
21 think there are some where without the penetration covered  
22 by the case law or explicit references to violence and the  
23 descriptions, which are undisputed, I'm not going to make  
24 that finding. Again as we've heard, that doesn't make any  
25 difference in terms of the overall calculation.

1           So I will find that the enhancement is  
2 applicable to Count One, Count Two, Count Three. The  
3 first two because of the penetration. The third one  
4 because of the violence. The fourth one because of the  
5 penetration. And Count Four as well. Count Six, Count  
6 Ten, Count Twelve, Count Thirteen, Count Fourteen, Count  
7 Fifteen, Count Sixteen, Count Seventeen and Count  
8 Eighteen, I'll apply the enhancement. Probation did not  
9 apply it to Count Nine. I will not apply it to the  
10 remaining ones again without more extensive analysis of  
11 the videos. I don't think -- I'm not going to do that  
12 again, basically on the rule of lenity. But it does not  
13 make any difference in terms of the overall calculation  
14 because as I stated, the fact that at least one of them  
15 applies gets us to Level 44 and it won't make any  
16 difference in the final calculation.

17           And then on the issue of grouping, the defense  
18 is objecting to the grouping enhancement, seeing these as  
19 part of the same and not a separate harm. It is true that  
20 under 3D1.2(d), offenses such as this one are explicitly  
21 by the guideline at issue are not grouped under the  
22 concept of a total amount of harm or loss. But under U.S.  
23 versus White, 810 F.3d 212 (Fourth Circuit 2016), they  
24 could be grouped under subsections A or B of that -- of  
25 Guideline 3D1.2 if they involve the same victim and the



1 same act or transaction or same victim and two or more  
2 acts connected by a common scheme or plan.

3 And the Application Notes 3 and 4 provide  
4 examples, stating that two counts of an assault on a  
5 federal officer based on shootings on different days do  
6 not group. Two counts of raping the same person on  
7 different days also do not group. In White, the Fourth  
8 Circuit found that three threats against the same victim  
9 made on three consecutive days were properly not grouped.  
10 In U.S. versus Wise from the Fifth Circuit, 447 440 (Fifth  
11 Circuit 2006), the district court's determination that  
12 counts of production of child pornography occurring on  
13 different days did not group. That was upheld. But at  
14 the same time, the district court had found that counts  
15 occurring on the same day did group together. Based on  
16 the application notes and the cases, the counts occurring  
17 on different days clearly are separate groups because of  
18 the separate harm of each incident. And then the question  
19 is what to do about the ones on the same day.

20 As I stated, there are certain groups where it  
21 appears that both based on the timing of the videos and  
22 the descriptions of the videos, that they likely are  
23 covering the same act or episode. The only issue being  
24 the video being turned off at some point in the middle of  
25 that episode. And so those are Counts Seven through Nine

1 and Counts Eleven and Twelve. I'm going to find that  
2 those are -- should be grouped together. And then there  
3 are others, however, where there is encounters on the same  
4 day where there's a significant temporal gap and the  
5 descriptions indicate there's a -- basically, a separate  
6 encounter that's occurring. And I think those are  
7 arguably in the same category or arguably are separate  
8 incidents. And so I do think there's a qualitative  
9 difference between Seven through Nine and Eleven and  
10 Twelve on the one hand and then I believe it's Counts  
11 Three and Four, Six through Ten, Eleven through Twelve,  
12 Sixteen to Eighteen, which are on the same days, but in  
13 some cases, they are a separate incident.

14 But again as the government has noted, it  
15 doesn't really matter. If there are at least five groups,  
16 the guidelines enhancements are the same. So again out of  
17 an abundance of caution in the absence of any case law  
18 establishing the events on the same day do not fall under  
19 the concept of a common scheme or plan. I'm going to  
20 limit the groups, the separate groups to the ones on  
21 different days. That still leads to ten groups out of 18,  
22 again the most conservative estimate possible. But I'll  
23 make that finding. And so under 3D1.4, there still are  
24 more than five groups and the maximum increase of five  
25 levels still applies.

1           So with that finding, the total offense level is  
2     the same as it was in the original PSR, even though some  
3     of these calculations are a little bit different. The  
4     overall offense level number is 54. But because there's a  
5     maximum in the guidelines of 43, the total offense level  
6     is treated as 43. The Criminal History Category is I. So  
7     the advisory guideline range would be life imprisonment,  
8     but given the statutory maximums, there's effectively 360  
9     months or 30 years on each count and the guideline  
10    range for supervised release is five years to life on each  
11    count. The guideline range for a fine I believe have been  
12    calculated as 50,000 to 250,000 and the special assessment  
13    is \$1,800. Any objections other than what's already been  
14    stated to those calculations?

15           MS. O'MALLEY: One moment, Your Honor.

16           (Pause.)

17           MS. O'MALLEY: Your Honor, sorry. I was just --  
18    there was a change in the statute that -- and 18 United  
19    States Code, Section 3014 that provided for an additional  
20    \$5,000 assessment for account in these types of cases.

21           THE COURT: That did come up in the paperwork.  
22    I didn't see it in the report though. Was it --

23           MS. O'MALLEY: Yeah. I am not sure --

24           THE COURT: -- addressed in your memo either?

25           MS. O'MALLEY: I noted it in my -- I shouldn't

1 say I noted it in my papers. I don't know. I noted it in  
2 my notes last night when I was thinking about it. But I'm  
3 not sure -- I can't remember the exact timeframe of when  
4 the statute passed and it is only applicable if the  
5 defendant is found not to be indigent and based on the  
6 presentence report, there's no indication of any actual  
7 money that the defendant has. So I'm not sure that it  
8 would -- we would be able to apply it anyway if the  
9 defendant is --

10 THE COURT: Right. What's the statute cite for  
11 that again?

12 MS. O'MALLEY: I believe it's 18 United States  
13 Code, Section 1034. And I think it says when it passed,  
14 but -- it passed on May 29, 2015, which is in between  
15 Counts Two and Three.

16 THE COURT: And what does it mean to say that  
17 beginning on the date of enactment and ending on September  
18 30, 2019? I guess it doesn't matter since that second  
19 date hasn't occurred yet. Whether that's the offense  
20 conduct or something else.

21 MS. O'MALLEY: There was a temporary statute  
22 that was passed until it is renewed. The idea to collect  
23 additional funds for the courts and victims and such in  
24 these cases. There has been a recent new restitution  
25 statute that's also passed in dates cases.

1           THE COURT: So as you stated, it applies to any  
2 non-indigent person. So is it your position that it  
3 should apply or not apply in this case?

4           MS. O'MALLEY: Well, Your Honor, I don't have  
5 any information to refute what's in the presentence report  
6 that indicates he did have \$150,000 in an account and then  
7 his mother indicated that the bank account was empty. I  
8 have nothing to refute that. So given that the  
9 presentence report doesn't indicate any actual wealth, I'm  
10 not sure that I, you know, could challenge indigency if  
11 the defendant is claiming that he is indigent. But I  
12 would note that he has retained counsel. But other than  
13 that, I can't challenge it.

14          THE COURT: Just going to the --

15          MS. O'MALLEY: And I would just add, Your Honor,  
16 at least the Court can take into account obviously future  
17 ability to obtain wealth. But my hope is the Court  
18 applies the sentence the government is asking for. The  
19 only future ability to obtain wealth will be any work that  
20 he does inside the Bureau of Prisons.

21          THE COURT: Mr. Mebane, is it your view based on  
22 your report that the defendant is indigent?

23          MR. MEBANE: Yes, sir, Your Honor. Other than  
24 the possible money, but I believe it was for his mother or  
25 for his retirement account. I believe I captured that in

1 my report.

2 THE COURT: Well, but I mean we don't have -- we  
3 don't know what happened to the vehicle or the cash.

4 MR. MEBANE: No, sir. We do not have access to  
5 that.

6 THE COURT: Okay.

7 MR. MERCER: But that's the only asset that I  
8 was aware of at the time.

9 THE COURT: Okay. Mr. Mercer, do you have any  
10 information on what happened to the vehicle or the cash?

11 MR. MERCER: Well, a substantial portion of the  
12 cash ended up on -- in the hands of a casino in Anne  
13 Arundel County through no action of Mr. Thompson. The  
14 balance was for his legal fees. And I would suggest to  
15 the Court he has an inability to pay and the very modest  
16 amount that remains is for cost of things like transcripts  
17 and briefs. And so all that would happen with assessing  
18 fines is then he wouldn't be able to pay for transcripts  
19 and that would just sort of shift things around on the  
20 table.

21 But he is indigent. The vehicle he had was an  
22 old beat-up truck. I don't think it has any real market  
23 value. He doesn't have a retirement account or plan that  
24 we're aware of. And, you know, we are asking, of course,  
25 for no fine because we wouldn't want his -- we don't think

1     it's good penological sense to have a blanket floating  
2     lien on any earnings as modest as they are while  
3     incarcerated because of the need to have resources for  
4     things like basic necessities, commissary, things of that  
5     sort. So I don't think it would be reasonable to count  
6     future jail earnings.

7             THE COURT: Well, I mean this is a different  
8     story than the fine, which we'll get to. This is about  
9     whether there's a requirement under the statute that he be  
10    imposed this additional special assessment. And it seems  
11    as if he is required to face this except if I find that  
12    he's indigent. So that's really the question.

13            MR. MERCER: And, Your Honor, factually, he is  
14    indigent and I haven't heard anything to the contrary.  
15    And certainly coming in today, there was no contention  
16    that he was non-indigent or I would have --

17            THE COURT: Well, but as Ms. O'Malley pointed  
18    out, I mean most of our indigent defendants haven't  
19    retained counsel. So that certainly -- and we don't know  
20    what happened to this money. So there's a question there,  
21    isn't there? I mean as opposed to an indigent defendant  
22    who has qualified for appointed counsel and has had  
23    appointed counsel.

24            MR. MERCER: Well, Your Honor, again if we had  
25    been notified that his indigency status would be different

1     than what is indicated in the presentence report, we would  
2     have been in a position to address that before Your Honor.

3             THE COURT: That's a fair point.

4             MR. MERCER: I certainly think that the  
5     defendant using his available resources to retain counsel  
6     doesn't mean he is indigent. I mean if he had otherwise  
7     qualified for court-appointed representation at the  
8     beginning, the government would have borne the cost of  
9     that. But here he used his resources for his defense.  
10    But only a portion of those resources. The other portion  
11    of his resources was in an unauthorized manner --

12            THE COURT: Tell me more about that. What do  
13    you mean "unauthorized manner"?

14            MR. MERCER: Well, he was locked up.

15            THE COURT: Who took the money and who spent it?

16            MR. MERCER: Your Honor, I'm a little reluctant  
17    to dive into those facts other than to say that Mr.  
18    Thompson was incarcerated in March of 2017. And \$70,000  
19    went missing from his bank account after he was  
20    incarcerated and had no access to that account. And those  
21    funds as near as we can tell were just completely  
22    dissipated. That's my reference to the casino.

23            But so there is, you know, I will represent to  
24    the Court that the very modest amount that is remaining  
25    that is available is dedicated for costs such as obtaining



1 transcripts, printing of briefs, things of that nature  
2 directly related to his legal proceedings.

3 THE COURT: So I guess what I'm not getting here  
4 is you're talking in vague terms as there is a -- there is  
5 an amount of money left, but somehow when probation  
6 interviewed him, the impression is there's no money. But  
7 you are saying there is. And even if it's earmarked for  
8 something else, why isn't that in the report? why wasn't  
9 that disclosed? I mean if he has a bank account that has  
10 even like \$3,000 in it to pay for transcripts, why wasn't  
11 that disclosed to probation?

12 MR. MERCER: Well, Your Honor, he doesn't have a  
13 bank account. There are --

14 THE COURT: You are saying it's now your  
15 money --

16 MR. MERCER: Right. It's --

17 THE COURT: -- in your client account.

18 MR. MERCER: It's escrowed funds for --  
19 dedicated for costs.

20 THE COURT: I see.

21 MR. MERCER: So --

22 THE COURT: Would that include the special  
23 assessment of \$1,800 that's sort of undisputed?

24 MR. MERCER: I'm sorry, Your Honor?

25 THE COURT: Would that include paying the

1 original special assessment of \$1,800 that's undisputed?

2 MR. MERCER: No. Because I think he  
3 legitimately qualifies. He is indigent.

4 THE COURT: I don't think there's an exception  
5 for the \$1,800, is there?

6 MS. O'MALLEY: No, there's not, Your Honor.

7 THE COURT: I don't think so.

8 MR. MERCER: Your Honor, to the extent there are  
9 any waivable fines or costs --

10 THE COURT: Right.

11 MR. MERCER: -- based on indigency, we're asking  
12 for the Court to waive those fines or costs and again I  
13 would have approached this matter differently.

14 THE COURT: I understand. I think that's a fair  
15 point. So where I'm going to leave it is probation has  
16 effectively found he's indigent. There was no objection  
17 to that finding by the government. There was no analysis,  
18 frankly, offered on this new enhancement and so because  
19 the state of the record at this point is that he is  
20 indigent and neither side has presented anything to refute  
21 that, I'm going to not apply the enhancement under Section  
22 3014 or the enhanced special assessment. So the special  
23 assessment will be \$1,800.

24 And I think I said other than any other  
25 objections we've already talked about for the guidelines,

1 is there anything else -- any other objections to the  
2 guidelines or the calculations that I've just offered?

3 MS. O'MALLEY: Not from the government, Your  
4 Honor.

5 THE COURT: Okay. Then the last question I had  
6 on the mechanics of it is under the PSR, it states that  
7 under 18 USC, 3663(a), restitution in the amount --  
8 restitution shall be ordered. And you said you have no  
9 information on that. So I'm assuming that that's it or is  
10 there something else that's forthcoming?

11 MS. O'MALLEY: I don't anticipate receiving any  
12 requests, Your Honor.

13 THE COURT: Okay. So we can just finalize the  
14 judgment after today.

15 MS. O'MALLEY: Yes, Your Honor.

16 THE COURT: Okay. Thank you. So with all that  
17 out of the way and with the guidelines being what they  
18 were, at least in terms of the final numbers, even though  
19 some of the intermediate calculations are slightly  
20 different, I'll hear from the parties on the sentencing.

21 I usually would prefer unless someone suggests  
22 otherwise that we have -- I think we have at least one  
23 member of the public who would like to speak first, hear  
24 from that person first, then hear from the government,  
25 then the defense and then if he would like to, Mr.

1 Thompson. So can we call forth the witness or the  
2 individual?

3 MS. O'MALLEY: Yes, Your Honor. And is it all  
4 right if she stands --

5 THE COURT: Yes. Definitely. Good morning,  
6 ma'am.

7 THE WITNESS: Do I --

8 THE COURT: Just whatever you'd like me to hear.  
9 You go ahead and take your time.

10 THE WITNESS: My name is Brittany. Growing up,  
11 you always heard of all these terrible things happening in  
12 the news or saw them in T.V. shows and movies. You never  
13 in a million years think that this is going to happen to  
14 you or your child because you'll do anything and  
15 everything to make sure that it doesn't. Unfortunately, I  
16 wasn't so lucky. I placed my child in the hands of  
17 someone that I thought would always protect her and make  
18 sure nothing bad ever happened to her, but I couldn't have  
19 been more wrong.

20 Almost two years ago, I received a message  
21 telling me the F.B.I. was going around my old neighborhood  
22 showing my daughter's picture and trying to find her  
23 parents. I honestly thought that it had to have been some  
24 sort of joke because there was no way the F.B.I. could  
25 have been looking for me or inquiring about my daughter,

1 but again I was wrong.

2 After contacting the F.B.I., they insisted they  
3 meet with me immediately. They told me that my child, my  
4 baby had been sexually assaulted by a man named Kyle  
5 Thompson. They asked me if I knew anyone by that name and  
6 at first I said no, because it didn't register in my mind.  
7 But then it dawned on me that my mother's boyfriend's name  
8 was Kyle Thompson. I didn't know -- I don't know if I'll  
9 ever be able to put into words exactly how I felt in that  
10 moment. It felt like my entire world had come crashing  
11 down around me and there was no way out.

12 I thought I did everything to protect her. I  
13 thought I could trust my own mother more than I could  
14 trust any daycare or friend. To know that my own mother  
15 took my child to this man's house time and time again  
16 knowing what he was doing to her just makes me feel so  
17 disgusted inside.

18 My mother was under strict rules to never take  
19 my child anywhere near that man because I had never met  
20 him and knew nothing about him. But it's obvious that my  
21 rules and wishes meant nothing over what he asked of her.

22 So many people have told me that I can't blame  
23 myself for what happened. But I will blame myself until  
24 the day that I die.

25 I was a fool to not dig deeper into the signs

1 that pointed to her being molested. She was peeing the  
2 bed, having nightmares, lashing out and developed a  
3 stammer. All things I never should have disregarded. I  
4 feel like I failed her.

5 I cried numerous times a day for weeks after I  
6 found out. I didn't know what to do or how to help her.  
7 Every time I looked at her, I cried.

8 After the F.B.I. interviewed my daughter, she  
9 told me things that she remembered from the times when she  
10 was at Kyle's house and it broke me even more. She  
11 doesn't remember everything. And over time, I prayed that  
12 she forgets all of it ever happened. I know that in the  
13 future, she may struggle with things and not know why, but  
14 I will be there for her every single time.

15 At the age of 6, she shows signs that I know are  
16 from trauma. She is extremely shy and won't talk to  
17 anyone she doesn't know very well and acts like she's  
18 scared of everyone. She gets terrified any time anyone  
19 raises their voice even in the slightest and cries asking  
20 for everyone to stop yelling. She's terrified of getting  
21 in trouble even for the smallest things and I have to  
22 constantly remind her that it is something that she's not  
23 going to get in trouble for and that it is all right.

24 Talking about my feelings isn't something that  
25 comes easy for me. I developed serious depression after I

1 found everything out. I at first was in denial that I had  
2 depression. But then realized that I did in fact need  
3 help getting out of the black hole that I felt like I was  
4 in.

5 Fighting this depression is something I still  
6 struggle with every single day. There are days when I do  
7 nothing but cry because the thought of all this still  
8 kills me inside. I have so many different emotions that I  
9 go through. But the one I think I struggle with most is  
10 anger. I'm angry at myself and I'm angry at Tracey, my  
11 mother. Tracey denied any involvement in this and claims  
12 she had no idea. But look where she is today. She's  
13 still standing by his side, defending him.

14 She has never once tried to reach out to me,  
15 never tried to say she was sorry that she hurt me or S. in  
16 any way. Never once asked how my daughter was or how I  
17 was. She can't even look me in the eyes as we walk past  
18 each other because she is that much of a coward. Knowing  
19 that my mother cared that little about my own daughter and  
20 her own granddaughter sickens me. How can anyone stand  
21 behind and defend such a sick and disgusting human being.  
22 I'm ashamed to even call her my mother and refuse to  
23 because to me she is dead.

24 If the courts can't hold her accountable for the  
25 role that I know she played in all this, then I hope that

1 kyle be given nothing less than the maximum possible  
2 sentencing. I will never understand why any of this  
3 happened and why this had to happen to my child. But  
4 through all of this, there's one thing that I do know. He  
5 didn't win. I will spend the rest of my life working past  
6 all this, but one thing is for sure. I am stronger today  
7 than I ever was. That's it.

8 THE COURT: Thank you very much, ma'am.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you for coming here today.  
11 And that's it for members of the public? Is that right,  
12 Ms. O'Malley?

13 MS. O'MALLEY: Yes, Your Honor.

14 THE COURT: Okay. So I'll hear from the  
15 government first then.

16 MS. O'MALLEY: Thank you, Your Honor.

17 THE COURT: And before I forget, if you can just  
18 along the way help to clarify for me what your position is  
19 on this -- the issue at the very back end regarding the --  
20 whether the sentence should be deemed concurrent or  
21 consecutive to at the anticipated sentence on the state  
22 side?

23 MS. O'MALLEY: Certainly, Your Honor. I will  
24 address that.

25 THE COURT: Then we can deal with that at the



1 end.

2 MS. O'MALLEY: I'll address that in my  
3 presentation, Your Honor.

4 Your Honor, the nature and circumstances of this  
5 offense amount to pure evil. The defendant sexually  
6 abused very young girls. Girls who were still wearing  
7 pull-ups and sucking on pacifiers and the defendant  
8 recorded himself engaged in these heinous acts. What is  
9 even worse, the defendant live-streamed this abuse while  
10 it was happening so the girls had to watch what was  
11 happening to them.

12 There is no adjective strong enough to capture  
13 the nature of this offense. The defendant attempted to  
14 and did anally and vaginally penetrate these little girls  
15 with his fingers and with his penis. The defendant bound  
16 one of his victims with a bath robe tie so she could not  
17 even move and forced his penis into her mouth.

18 The victims in this case are real little girls,  
19 who have to spend the rest of their lives picking up the  
20 pieces of the damage that has been done to them. The  
21 little girls in this case, Your Honor, are O., S., and C.  
22 These are real little girls that forever have to live with  
23 this horror.

24 The defendant threw O. across the bed, slapped  
25 her and ignored her cries of pain. In fact the defendant

1 clearly took pleasure in the pain of these little girls.  
2 I will never forget the sound of O.'s voice calling out  
3 for her mommy only to be told in a cold response of the  
4 defendant to shut up and telling her that her mommy cannot  
5 save her now as he held her down and anally penetrated  
6 her.

7           The Court has detailed descriptions of the 18  
8 videos of the defendant brutally sexually abusing little  
9 girls. The videos range in length from just a couple of  
10 minutes to 10, 15, 20, and 25 minutes long. There is  
11 almost no worst imaginable offense that the horror that  
12 these little girls endured. Thanks to one brave woman who  
13 came forward to law enforcement to report the defendant,  
14 this abuse stopped. It is unclear how much longer these  
15 little girls would have had to endure abuse and how many  
16 more little girls would have been caused pain were it not  
17 for this brave woman, a woman who the defendant decided to  
18 show these videos one Saturday night as she came forward  
19 to the FBI and reported what she had seen.

20           The FBI and Montgomery County Police learned  
21 about this case because of her and immediately acted. She  
22 was even able to tell them that he hid the SD card with  
23 these videos in a can with a false bottom, a cleaning can  
24 in his laundry room.

25           This woman came forward despite great fear for

1 her own safety and we are grateful because she saved these  
2 little girls.

3           The tragedy of this offense has forever damaged  
4 these precious little girls and their families. The  
5 mothers of these little girls expressed the pain that they  
6 have been going through. You heard it from one of them  
7 today and I know you read it in their victim impact  
8 statements. O.'s mother noted that no little girl should  
9 have to go through what O. has gone through. C.'s mother  
10 expressed that she's afraid that everyone she comes in  
11 contact with might hurt her and her children. That she  
12 will have to forever live with the guilt of not being able  
13 to protect her daughter from this horrible person. S.'s  
14 mother eloquently explained her thoughts in her own words  
15 to you. So I won't repeat them here.

16           In long term, these little girls will likely  
17 struggle in school, struggle to maintain healthy  
18 relationships with males and be more prone to depression  
19 and suicide. These little girls have been handed a life  
20 sentence as a result of the defendant's actions and the  
21 defendant deserves nothing less than the maximum sentence  
22 as a result.

23           In terms of the history and characteristics of  
24 the defendant, the defendant is a dangerous pedophile who  
25 cannot seem to help but seek out and sexually abuse little

1 girls. As the Court is aware from the motions hearings in  
2 this case, the defendant took another little girl into the  
3 woods behind his house and started groping her a few years  
4 prior to the incidents in this case. The abuse was not  
5 discovered until the little girl reported to her school  
6 counselor. And even then, the little girl could not  
7 provide information on the identity of the defendant at  
8 the time. It was only after this abuse was discovered  
9 that all the pieces could be put together.

10 In looking at the history and characteristics of  
11 the defendant, the Court should take note that the  
12 defendant has never been able to acknowledge his paternity  
13 of one of these victims, despite the fact that he would  
14 allow the victim to call him daddy and he abused her  
15 repeatedly. The defendant has never shown an ounce of  
16 remorse for the torture he put these little girls through  
17 and the lifetime of pain that they have to look forward  
18 to.

19 One other really sad part of this case that's  
20 referenced in the PSR is that the defendant's father  
21 committed suicide after learning what the defendant did in  
22 this case. The defendant's father never even knew he had  
23 grandchildren, much less that his son was sexually abusing  
24 one of them and unfortunately, it was too much for him to  
25 bear.

1           In terms of the seriousness of the offense and  
2 just punishment and avoiding unwarranted sentencing  
3 disparities, the only just punishment for such a depraved  
4 crime against children is the absolute maximum sentence  
5 allowed by law. And that's why, Your Honor, I ask you to  
6 impose the maximum of 30 years per count for 540 years  
7 total. The defendant sexually abused little girls between  
8 the ages of 2 and 4 years old for his own sexual  
9 satisfaction and sadistic tendencies. Nothing less than a  
10 sentence that keeps the defendant out of society forever  
11 is sufficient in this case.

12           The government has provided numerous examples, I  
13 believe there are at least 19 cases and I have hundreds  
14 more, where courts around the country have imposed  
15 sentences over a hundred years. Those courts, those  
16 decisions have been upheld by appellate courts over and  
17 over again as both procedurally and substantively  
18 reasonable.

19           In this case, the defendant in the last-minute  
20 filing after the court closed at 3:00 yesterday tried to  
21 claim that his sentence was not procedurally reasonable  
22 that I'm asking for 540 years because the life expectancy  
23 has been calculated to be 470 months in certain cases in  
24 the Eighth Circuit. I wanted to distinguish for the Court  
25 a couple of things about that line of argument.

1           First, the cases cited in -- the Eighth Circuit  
2 cases cited by the defendant have to do with calculation  
3 of a 5K1.1 reduction and the courts made clear that in  
4 order to apply a 25% reduction to the sentence, they have  
5 to have a starting point of months to reduce from. You  
6 can't take 25% of life and reduce it and come up with any  
7 actual number for a sentence. So those cases were in the  
8 5K line of cases.

9           I would also note that there were two different  
10 cases in the Eighth Circuit after those cases, which were  
11 United States versus Demeyer, which is 665 F.3rd 1374 and  
12 United States versus Betcher, which is 534 F.3rd 820.  
13 Both of those upheld sentences where the guidelines were  
14 life as we have here. But the guideline -- the sentence  
15 itself was far more than a life expectancy. In Demeyer,  
16 the sentence was 120 years and was affirmed and in  
17 Betcher, the sentence was 750 years and was affirmed.  
18 That's the same court where the cases the defendant cited  
19 come from.

20           The Second Circuit's decision in United States  
21 versus Howells has a nice discussion of the procedurally  
22 reasonable challenge similar to the one the defendant is  
23 making here and it notes that where a defendant's total  
24 punishment is life imprisonment, a term of years longer  
25 than his life is harmless because no defendant can be

1 incarcerated beyond his lifetime anyway. And that court  
2 actually explains that if the Court were to take into  
3 account life expectancy, you could actually give the  
4 defendant a windfall because if he were to live more than  
5 his life expectancy, he would end up serving less than a  
6 life sentence.

7 In this case, we ask that the sentence be in  
8 line with sentences around the country for similar conduct  
9 than we have here, which is far more than a hundred years,  
10 which is the maximum on every count. That's the only  
11 sentence that would be just.

12 THE COURT: The maximum is 30 on each count.  
13 Right?

14 MS. O'MALLEY: The maximum is 30 on each count.  
15 So if my math is correct, I believe that's 540 years.

16 THE COURT: Right. Let me ask this. I mean I  
17 think you've done a good job showing with your submission  
18 that perhaps based on this rationale that all these higher  
19 numbers are in fact basically the equivalent of a life  
20 sentence. That there is -- they are going to be deemed  
21 reasonable regardless of what that high number is. But  
22 how does one square the particular number, 540, with the  
23 general guidance and actual requirement the Court impose a  
24 sentence that's sufficient, but not greater than necessary  
25 to meet the purposes of sentencing? Why is 540 necessary

1 as opposed to 440 or 340 or even 140?

2 MS. O'MALLEY: Well, I think, Your Honor,  
3 the -- what is necessary to fully account for the other  
4 factors in 3553 is the maximum punishment on each count  
5 and that's how you get to the 540 number. Once you get  
6 beyond a hundred, obviously every additional year is sort  
7 of an academic exercise.

8 THE COURT: Well, which part of 3553(a) are you  
9 asking me to rely on saying that even though as a  
10 practical matter, it doesn't make a difference, this  
11 number, 540, is necessary versus some lower number?

12 MS. O'MALLEY: Well, in particular, I would ask  
13 that you look at the need to have a sentence that reflects  
14 the seriousness of the offense and that you also consider  
15 the nature and circumstances of the offense.

16 THE COURT: Okay.

17 MS. O'MALLEY: And those two coupled together  
18 justify a maximum sentence as to each count because each  
19 count caused substantial harm to the victims and each  
20 count should be punished accordingly.

21 THE COURT: Okay.

22 MS. O'MALLEY: And I would note that in terms  
23 of -- and I'll go back to the seriousness of the offense  
24 and just punishment. Those are reasons why I think there  
25 needs to be a sentence that absolutely ensures that he



1 never gets out of prison ever again. And again, he's  
2 going to get the benefit of whenever he dies, he is not  
3 going to serve out the rest of his term obviously. So  
4 whatever number, we just want to make sure that there is  
5 no possibility of the defendant ever being released again.

6 In terms of seriousness and just punishment, the  
7 only just punishment for the depraved conduct that we have  
8 here is 540 years. Your Honor, I've done a lot of these  
9 cases over eight years. I have never seen anything close  
10 to this. Never. This is the most egregious case I've  
11 ever had. I've had cases that got 75 years. We've had  
12 cases in our office that got 120 years. They pale in  
13 comparison to the conduct that is at issue here and that's  
14 why I believe 540 years is necessary to reflect the  
15 seriousness of what we're dealing with here.

16 And again I've given the Court I hope great  
17 comfort that the Court's finding of a 540-year sentence  
18 would be upheld on appeal given that it has been upheld.  
19 A hundred-twenty-year sentence which is the maximum  
20 sentence has been upheld by the Fourth Circuit when there  
21 were just four counts. Courts around the country have  
22 upheld hundreds of years sentences.

23 In terms of deterrence, I think the Court should  
24 be sending a message generally to the world and to any  
25 particular defendants out there who might even think about

1 touching a child that there are severe consequences that  
2 ensure that you will never get out of prison if you do  
3 this to a child. If it keeps even one person out there  
4 from touching a child because they read about this  
5 sentence, then I believe that one child being saved is  
6 worth it.

7 In terms of specific deterrence, there is  
8 nothing that is going to deter this defendant. He has  
9 shown a pattern of repeated abuse of children for years.  
10 He cannot be near children. He cannot be in society. And  
11 he must therefore be separated from society and spend his  
12 life in prison.

13 I would also note that protection of the public  
14 warrants a sentence of 540 years. The only way to protect  
15 the public is to keep the defendant out of the public. I  
16 therefore ask the Court to sentence the defendant to every  
17 second of the 540 years in prison that is available based  
18 on the 18 counts of conviction for production of child  
19 pornography. I cannot imagine a defendant more deserving  
20 of such a sentence, Your Honor.

21 Now in terms of consecutive versus concurrent,  
22 if the -- I have thought about this a lot and I struggle  
23 to know the right answer because if the Court imposes the  
24 sentence which the government is asking, it is a  
25 completely academic question because there will never be a

1 state sentence to be served. It will be in effect  
2 concurrent in that sense because he will never make his  
3 way over to Montgomery County.

4 THE COURT: Can you just clarify for me and  
5 perhaps because of some of the earlier discussions in this  
6 case, I just want to make sure I'm not missing something  
7 here. Does the concurrent/consecutive have any impact on  
8 whether he serves his sentence federally or in the state  
9 side?

10 MS. O'MALLEY: No, Your Honor. So we have --  
11 and actually, that brings the point I want to address here  
12 in terms of -- so we have agreed from executive to  
13 executive function to transfer the jurisdiction of the  
14 defendant from state custody to federal custody. And so  
15 he is now in federal custody. Primary jurisdiction has  
16 been transferred. So he will remain in federal custody  
17 and serve his federal sentence first. That would not have  
18 happened if we had not done that transfer of jurisdiction  
19 document. Without that, we can't do anything and he would  
20 be in state custody for the length of whatever sentence he  
21 received there even though the sentencing is first.

22 THE COURT: So -- okay. So with that transfer,  
23 which you said is basically operational on its own -- I  
24 think you've asked me to make it part of the judgment  
25 which I'm certainly happy to do -- whatever time he gets,

1 he'll serve on the federal side first. And then from the  
2 state side -- I guess, you know, I looked at the law on  
3 this recently and I guess what I haven't quite figured out  
4 and I'm not sure the cases really make it clear is what  
5 does this do to the options available to the state  
6 sentencing judge? So if I were to conclude that this  
7 should run -- well, I mean what does it do to that judge's  
8 options, given that it seems a little bit unusual? I mean  
9 it's not unusual because it's obviously part of what the  
10 courts have suggested or in fact required at times that we  
11 do.

12 But it's one thing to say we know that there's a  
13 state sentence out there and we're going to make it  
14 consecutive or concurrent. But here, that sentence hasn't  
15 occurred yet. I know that the law says that we -- and the  
16 guidelines also point out that we should be making this  
17 determination. But to some degree, it's one thing to say  
18 I think they should run it together or separate. But what  
19 if the state judge disagrees? Do they still have the  
20 option to do something different?

21 MS. O'MALLEY: My reading of the case law, Your  
22 Honor, is that what you determine is going to control. So  
23 if you determine that the sentences run concurrent, it  
24 doesn't really matter if the state judge then says the  
25 sentences will run consecutive because your finding will

1 trump that. So they will be -- unfortunately, it does  
2 have an impact on the state court in that way and my  
3 reading of the very recent case that just came out in  
4 January, I think it's Lynn if I'm not mistaken, in a case  
5 that you have to make a finding. So you can't sort of  
6 defer and leave it to the future state judge to decide.

7 THE COURT: I just looked at that yesterday. I  
8 don't know if I got that out of it. I think it certainly  
9 said that you have the option --

10 MS. O'MALLEY: Fair enough.

11 THE COURT: -- to make either finding. It also  
12 seemed as if in that case and other cases, some of the  
13 judges and this is part of my problem with it is it's sort  
14 of hard to make -- maybe in this case, it might not make a  
15 difference, but in general it seems like it would be hard  
16 to make a determination not knowing what the state is  
17 going to do and it seems like a strange doctrine to me,  
18 frankly, but --

19 MS. O'MALLEY: I don't disagree with you there,  
20 Your Honor, and all I can put forward to you is for all of  
21 the factors that I just outlined under 3553, I think the  
22 Court would be well within its bounds to make it  
23 consecutive for looking at the factors under 3553. I  
24 would note for the Court's consideration obviously we are  
25 talking about the same conduct. So that that certainly is

1 something --

2 THE COURT: Is there any conduct outside of it  
3 in the state case? I haven't focused on what's going on  
4 there. Are there other victims or other --

5 MS. O'MALLEY: One moment, Your Honor. Court's  
6 indulgence one moment.

7 THE COURT: Yes.

8 (Pause.)

9 MS. O'MALLEY: Your Honor, I'm sorry. I was  
10 clarifying with the state prosecutor who is actually in  
11 the courtroom. The counts, the ten counts that we have in  
12 the state case are based on the same three victims in the  
13 same acts.

14 THE COURT: And what is the charge over there?  
15 Like sexual assault --

16 MS. O'MALLEY: There are several different ones.  
17 There is sexual abuse of a minor and I'd have to go back  
18 and look at the specific ones. They're all laid out in  
19 the I believe in the presentence report. I know the most  
20 serious charge is sexual abuse of a minor. Paragraph 29  
21 in the presentence report, Your Honor, lays out the  
22 charges.

23 THE COURT: Oh, right. Of course. Yes.

24 MS. O'MALLEY: Oh, page 29. I apologize.  
25 Thanks to Mr. Mebane. So sexual abuse of a minor, sex

1 offense, third degree, attempted first-degree rape,  
2 attempted second-degree rape.

3 THE COURT: Okay. Okay. I think I understand.  
4 But I think you agree, am I reading this correctly that  
5 starting with the guidelines itself, but then also it  
6 seems as if the general starting point is concurrent, but  
7 consecutive is an option as opposed to the other way  
8 around?

9 MS. O'MALLEY: I think that's right, Your Honor.  
10 I wouldn't disagree with that reading of the guidelines.

11 THE COURT: Okay. Thank you.

12 MS. O'MALLEY: Thank you, Your Honor.

13 THE COURT: Mr. Mercer, your turn.

14 MR. MERCER: Thank you. Your Honor, if I could  
15 just address the concurrent/consecutive first since that  
16 was just being discussed?

17 THE COURT: Okay.

18 MR. MERCER: We are asking for that this Court  
19 impose a concurrent sentence to any anticipated state  
20 sentence. And we believe that's procedurally the  
21 appropriate way to proceed to ensure that there is no  
22 unnecessary or unintended interference with the intent of  
23 the parties for Mr. Thompson to serve out his federal  
24 sentence in a Bureau of Prisons facility that provides  
25 sexual offender treatment. And here is why we're

1 concerned that if this Court imposes a consecutive  
2 sentence to the yet to be imposed state sentence, that  
3 there could be an unnecessary or unintended consequence.

4 To begin first, this Court is now today the  
5 court with primary jurisdiction, which means that the  
6 state court is effectively the court in a position to  
7 decide whether the sentence on the state side is  
8 concurrent or consecutive to the federal sentence. And,  
9 Your Honor, I'll note that on the state side, Mr. Thompson  
10 is facing three possible life terms plus 145 years. What  
11 I'm concerned about is that if this Court makes a sentence  
12 consecutive to a yet to be imposed state sentence, what  
13 may happen and I believe I provided the citation under 18  
14 USC, 3621(b) is if the Bureau of Prisons then receives the  
15 paperwork and sees that the federal sentence is to run  
16 consecutive to a sentence that I think we can reasonably  
17 expect is going to be severe on the state side, then the  
18 Bureau of Prisons as I read the statute, the plain  
19 language of the statute would have the ability to  
20 designate a state facility as the place where Mr. Thompson  
21 would serve out his sentence. And since the federal court  
22 had imposed a consecutive to the state sentence, that may  
23 be how Bureau of Prisons interprets its statutory --

24 THE COURT: Which part of that statute are you  
25 or that provision are you referring to?



1           MR. MERCER: So 3621(b) and it says that "the  
2 Bureau of Prisons shall designate the place of the  
3 prisoner's imprisonment. The Bureau may designate any  
4 available penal or correctional facility that meets  
5 minimum standards of health and habitability established  
6 by the Bureau whether maintained by the federal government  
7 or otherwise and whether within or without the judicial  
8 district in which the person was convicted."

9           And in researching this issue, Your Honor, my  
10 understanding is that there are instances where the Bureau  
11 of Prisons may designate a state facility to serve out a  
12 sentence. But, of course, if this Court makes a sentence  
13 consecutive to a state-imposed sentence, then Mr. Thompson  
14 is in federal custody, but not serving a federal sentence.  
15 And I'm not sure what -- if this is a sort of an academic  
16 decision as the government characterizes it, I'm not sure  
17 why it would be important to make this sentence  
18 consecutive to the state sentence given that that creates  
19 the potential for some unintended consequence.

20           THE COURT: I mean I get what you're saying by  
21 that line being giving the Bureau of Prisons enough  
22 authority that they perhaps could say someone who is in  
23 state custody or could be there, that's where they could  
24 serve their sentence. But why is that more of a problem  
25 if it's consecutive rather than concurrent?

1 MR. MERCER: Well, because --

2 THE COURT: I mean it seems like you're saying  
3 that even though we could all decide what we think should  
4 happen, they could still make a determination whether for  
5 space reasons or otherwise to --

6 MR. MERCER: And --

7 THE COURT: So why is the concurrent a better  
8 bet for that outcome, which I think I understood was  
9 something that was bargained for in the state plea  
10 agreement, was it, to at least make efforts to get him  
11 into the federal system for this?

12 MR. MERCER: Yes.

13 MS. O'MALLEY: Yes, Your Honor. That's what I  
14 did want to note. We're talking about this as that doing  
15 that transfer of jurisdiction was part of the --

16 THE COURT: Part of the deal.

17 MS. O'MALLEY: -- inducement for him to plead to  
18 the state charges.

19 THE COURT: Okay.

20 MR. MERCER: And, Your Honor, what I can just  
21 submit to the Court on -- to that point is I would far  
22 rather be in a situation with the Bureau of Prisons where  
23 Mr. Thompson is serving a federal sentence and the primary  
24 jurisdiction is with the federal government than in a  
25 situation where primary jurisdiction is with the federal

1 government, but the federal sentence doesn't begin to run  
2 until the state sentence is served. And if that state  
3 sentence is, for example, a life sentence, I think that  
4 just invites precisely the type of complication that we're  
5 trying to avoid just by -- and not for any solid  
6 penological purpose.

7 THE COURT: I understand.

8 MR. MERCER: Now, Your Honor, the acts here are  
9 profoundly disturbing. And we do not dispute the horrific  
10 nature of these acts. But it is not an act that is going  
11 to serve the sentence. It's Kyle Thompson. And when Your  
12 Honor asked why is the sentence of 540 years or over 6,000  
13 months, which greatly exceeds his life expectancy not  
14 greater than necessary to serve the purposes of  
15 sentencing, the response was to focus on the act. This is  
16 a sentencing of Mr. Thompson, the person. Ms. Raquin and  
17 I have had the honor of representing Mr. Thompson in his  
18 federal and state cases and we'll continue to work with  
19 him.

20 And as Your Honor may recognize in a rather  
21 poignant letter from Mr. Thompson's mother, he is a person  
22 and he's a person that will receive punishment from the  
23 Court. He's a person that we're also asking the Court to  
24 recommend treatment for, which the Court may do under  
25 3582(a) and 3621(b) to ensure that he receives sexual

1 offender treatment. The recommended facility would be the  
2 Bureau of Prisons in Tucson, Arizona. What we can say,  
3 Your Honor, that is evidence based is that the generally  
4 accepted peer-reviewed studies, which are even discussed  
5 by the U.S. Sentencing Commission does show that treatment  
6 can be effective and that recidivism rates are relatively  
7 lower.

8 Now I understand you always have to be cautious  
9 in looking at these numbers, but Mr. Thompson, the person,  
10 can benefit from this treatment and that furthers an  
11 important purpose of sentencing in a society that we all  
12 hope is maturing and evolving.

13 We are asking Your Honor for a sentence within  
14 the guidelines. The core of the question is what is life?  
15 And we believe that life doesn't mean 540 years or  
16 6,000-plus months. We don't believe that that sends any  
17 rational message. And we believe that that is contrary to  
18 the very framework of the sentencing guidelines which stop  
19 at 43, life. Life means life. Life doesn't mean 540  
20 years or 6,000 months. Now why does that matter? It  
21 matters in considering issues like conditions of  
22 confinement and whether a sentence of 540 years or  
23 6,000-plus months could become a proxy for less treatment  
24 or placement or programming.

25 In other words, if the sentence -- if the

1 guidelines are life and the commandment of the guidelines  
2 is a sentence not greater than necessary and what we end  
3 up with is a sentence with the number that seems more like  
4 it's searching for a headline than serving any penological  
5 purpose, that superfluous nonsensical number can impact on  
6 conditions of confinement in ways that may not be fully  
7 understood or contemplated now because at 33, there are  
8 decades of his life ahead.

9               So, Your Honor, our request, our implorement to  
10 the Court is to view a sentence within the guidelines that  
11 life means life. It doesn't mean a much greater number  
12 and that it matters. We ask for the recommendation to the  
13 type of facility we've described --

14              THE COURT: What specifically would you want the  
15 recommendation to say?

16              MR. MERCER: That he be recommended -- that the  
17 Court designate the type of facility under 18 USC, 3582(a)  
18 and 18 USC, 3621(b) that provides sexual offender  
19 treatment programming in the Bureau of Prisons and that  
20 may further designate as I understand it the B.O.P. in  
21 Tucson, Arizona as the facility where such treatment is  
22 provided.

23              THE COURT: You're saying that's his preferred  
24 location or the only one that does this?

25              MR. MERCER: I'll defer to the government on

1 this, Your Honor, but I understand it is the one Bureau of  
2 Prison that is specifically designated for these types of  
3 offenders.

4 THE COURT: Okay.

5 MR. MERCER: And we would ask for a concurrent  
6 sentence to the anticipated state sentence and I believe  
7 we've already covered the fines and costs that can be  
8 waived based on indigency, which we would ask for Your  
9 Honor.

10 THE COURT: Okay. Ms. O'Malley, you want to  
11 make a point?

12 MS. O'MALLEY: Just on the designation, Your  
13 Honor. I would ask that the Court make it clear that it  
14 be a facility that has sex offender management and  
15 treatment. Sex offender management programs are different  
16 than treatment programs and are necessary for a defendant  
17 like this because it includes further monitoring by the  
18 Bureau of Prisons of individuals convicted of these types  
19 of offenses. And there are more than one facility in the  
20 country. There's at least four that I'm aware of. There  
21 is Butner, Devens, Petersburg and I believe Arizona is a  
22 place that a lot of defendants in these cases do get sent.  
23 So I would defer to the Bureau of Prisons on that, but I  
24 think paramount is that it be a sex offender management  
25 and treatment program.

1                   THE COURT: Any issues with that, Mr. Mercer?

2                   MR. MERCER: No, Your Honor. In fact I would  
3 adopt that that -- because I think under the First Step  
4 Act, the Bureau of Prisons would look for the closest  
5 facility that would provide this level of management and  
6 treatment, which may be the North Carolina facility.

7                   THE COURT: So do you want me to recommend any  
8 particular facility or just the closest one that provides  
9 sex offender management and treatment?

10                  MR. MERCER: The North Carolina facility, Your  
11 Honor.

12                  THE COURT: Butner? Okay.

13                  MR. MERCER: Yeah.

14                  THE COURT: Anything else you'd like to add, Mr.  
15 Mercer?

16                  MR. MERCER: No, Your Honor. Thank you.

17                  THE COURT: Mr. Thompson, you have the  
18 opportunity if you would like to to make a statement  
19 before the sentence?

20                  MR. MERCER: Your Honor, after consulting with  
21 counsel, Mr. Thompson in light of his appeals issues has  
22 decided to not offer any allocution at this time.

23                  THE COURT: Okay. Thank you.

24                  (Bench conference:)

25                  (It is the policy of this court that every

1 guilty plea and sentencing proceeding include a bench  
2 conference concerning whether the defendant is or is not  
3 cooperating.)

4 (In open court:)

5 THE COURT: In considering the appropriate  
6 sentence for Mr. Thompson, I have considered the advisory  
7 guideline range, which is the statutory maximum of 30  
8 years on each count. I've also considered all of the  
9 factors in 18 USC, Section 3553(a) including the nature  
10 and circumstances of the offense and history and  
11 characteristics of the defendant, the need to meet the  
12 purposes of sentencing and the need to avoid unwarranted  
13 disparities among similar defendants. I've also  
14 considered Congress' direction that the sentence imposed  
15 be sufficient, but not greater than necessary to comply  
16 with the purposes of sentencing. Although the maximum on  
17 each count is 30 years, under Guideline Section 5G1.2(d),  
18 the Court may sentence -- run sentences consecutively to  
19 the extent necessary to produce a combined sentence equal  
20 to the total punishment that is warranted. I'll discuss  
21 some, but not all these factors in detail.

22 First, on the nature and circumstances of the  
23 offense, these crimes were absolutely horrific,  
24 unspeakable crimes. The defendant repeatedly produced  
25 child pornography in the form of videos that he made of



1 himself engaged in disgusting sex acts with little girls  
2 between two and four years old. One of these children,  
3 the most frequent victim was his daughter. These acts  
4 included oral sex and anal sex and at times caused severe  
5 pain to the victims. He also used physical violence  
6 against them and verbal abuse, including tying -- and also  
7 tied up victims on occasion. At one point when one of the  
8 girls cried out "I want my mommy," he responded by saying  
9 "your mommy can't save you now." The videos are so  
10 horrible that anyone who saw even a part of them in the  
11 courtroom whether the judge, the jury or anyone else was  
12 profoundly affected and disturbed.

13           The harm caused by these crimes is too severe to  
14 contemplate. He physically harmed and abused little girls  
15 who were so young that one was wearing pull-ups in the  
16 video, another had a pacifier, another was wearing footed  
17 pajamas. These girls had their childhoods taken away from  
18 them before they even entered elementary school. The harm  
19 included not only the physical trauma of the sex acts, but  
20 a long lasting emotional trauma that these girls and their  
21 families will live with forever. One cannot imagine a  
22 more heinous crime than the offenses committed by this  
23 defendant.

24           As for the history and characteristics of the  
25 defendant, Mr. Thompson has no criminal record. But nor

1 does he have anything in his history that would provide  
2 any explanation for this conduct. There's no sign of any  
3 remorse for this conduct. There's no evidence that he has  
4 been diagnosed with any mental health disorder that would  
5 explain this evil conduct.

6           Given these factors, a 30-year sentence which is  
7 the guideline sentence for any one count is absolutely  
8 warranted. Even without the guidelines calculation  
9 stating that but for the statutory maximum, the guidelines  
10 sentence would be life imprisonment. The Court finds that  
11 an overall sentence amounting to life is warranted. These  
12 crimes are so horrific. The victims were so vulnerable  
13 and the harm was so frequent and repeated that such a  
14 sentence is necessary to reflect the seriousness of the  
15 offense, to promote respect for the law, to provide just  
16 punishment. There is also need to provide adequate  
17 deterrence to criminal conduct by others and to the  
18 defendant. Most importantly, a life sentence is needed to  
19 protect the public from further crimes by this defendant.  
20 He must never be allowed to be anywhere near children and  
21 such a sentence would lead to that result.

22           As for what the exact sentence should be, the  
23 government asks for the absolute maximum, 18 consecutive  
24 30-year sentences for a total of 540 years or 6,480  
25 months. Such a sentence as opposed to any other sentence

1 above say 75 years does not practically change the result  
2 on how much time the defendant will serve. But the  
3 government is correct that an extremely high sentence has  
4 some rationale in the form of general deterrence to others  
5 and to reflect society's strongest possible condemnation  
6 of the offense, to reflect the seriousness of the offense.  
7 The Court understands the impulse and shares the goal of  
8 sending the strongest possible message to deter others and  
9 to speak loudly and clearly that we as a people condemn  
10 this type of offense above almost every other kind.

11 At the same time, justice is better achieved not  
12 by an instinctive reflexive action of striking as hard a  
13 blow as possible, to take out our hurt and frustration at  
14 this crime by meting out as much punishment as possible,  
15 simply because we can. The instruction to courts to  
16 impose a sentence sufficient, but not greater than  
17 necessary to meet the purposes of sentencing is not served  
18 by that impulse or by a 540-year sentence. Our system of  
19 justice requires that we also weigh the specific facts of  
20 the offense. And it's certainly clear as I stated earlier  
21 that any one episode of this offense is worthy of the  
22 30-year sentence and that they are separate offenses and,  
23 therefore, stacking these 30-year sentences on top of each  
24 other is warranted.

25 But as I had concluded earlier, certain offenses

1 were properly grouped because they occurred on the same  
2 day and more specifically some were part of the exact same  
3 encounter. A consideration of the video shows that at  
4 least three different occasions, multiple videos occurred  
5 within minutes of each other during the same encounter.  
6 And the Court concludes that it would not be just just to  
7 add another 30 years for each of these counts because --  
8 just because in some instances the video was turned off  
9 and then turned on again. We could do so. And it would  
10 not be unjust to do so in an absolute sense. But where in  
11 reality there were 14 different episodes on which there  
12 are videos made, that in my view would not be just and  
13 would simply reflect a rush to inflict as much pain as  
14 possible and I don't believe that our system of justice is  
15 designed for that.

16           Whether, it's the Eighth Amendment or otherwise,  
17 we as a justice system put limits on what we do. This, of  
18 course, goes nowhere near that limit. But we put limits  
19 on ourselves because we understand that this is not -- we  
20 as a society do not engage in mob justice. We engage in  
21 thoughtful, careful justice under due process of law. And  
22 so I don't believe that adding those extra years is  
23 warranted in this situation.

24           Nevertheless, as I stated earlier, I do believe a  
25 sentence that imposes an amount of time that is clearly

1 more than a life sentence serves a purpose within the  
2 guidelines of sending a message of condemnation in terms  
3 of reflecting the seriousness of the offense and also in  
4 providing a measure of deterrence to others.

5 So I will sentence the defendant to a term of  
6 imprisonment of 420 years, which is 5,040 months  
7 reflecting 30 years for each of the encounters in this set  
8 of crimes. That sentence more than meets the purposes of  
9 sentencing including the public from -- protecting the  
10 public and reflecting the seriousness of the offense, but  
11 it is not greater than necessary to do so. With that, I'm  
12 going to impose the sentence. Mr. Thompson, if you could  
13 please stand?

14 In the case of United States versus Thompson,  
15 the Court sentences the defendant as follows: On Counts  
16 One through Eighteen, production of child pornography, the  
17 Court sentences you to a term of imprisonment of 420 years  
18 or 5,040 months. In total, that is 360 months on each  
19 count or 30 years on each count. These terms of  
20 imprisonment will run consecutively except the sentences  
21 on Counts Seven, Eight and Nine will run concurrently with  
22 each other, the sentences on Counts Eleven and Twelve will  
23 run concurrently with each other and the sentences on  
24 Counts Sixteen and Seventeen will run concurrently with  
25 each other for a total of 420 years or 5,040 months.

1           For each count, the Court also sentences you to  
2 a lifetime term of supervised release. All terms of  
3 supervised release will run concurrently to each other.

4           In addition to the standard and statutory  
5 conditions of supervised release, you will be required to  
6 follow the following special conditions of supervised  
7 release: That the periodic drug testing mandated by the  
8 Violent Crime Control and Law Enforcement Act of 1994 is  
9 suspended as you pose a low risk of substance abuse. That  
10 you must not communicate or otherwise interact with the  
11 victims in this case, either directly or through someone  
12 else, without first obtaining the permission of the  
13 probation officer. You must have no direct contact with  
14 any child you know or reasonably should know to be under  
15 the age of 18 including your own children without the  
16 permission of the probation officer. If you do have any  
17 direct contact with any child you know or reasonably  
18 should know is under 18, including your own children,  
19 without the permission of probation officer, you must  
20 report that contact to the probation officer within 24  
21 hours. And direct contact includes written communication,  
22 in-person communication or physical contact. It does not  
23 include incidental contact during ordinary daily  
24 activities in public places.

25           You shall not rent or use a post office box or

1 storage facility without prior approval from the probation  
2 officer. And if approved, any changes must be reported 72  
3 hours in advance. You shall permit the probation officer  
4 to conduct random inspections of any approved storage  
5 facility.

6           You must not go to or remain at any place where  
7 you know children under the age of 18 are likely to be  
8 including parks, schools, playgrounds and childcare  
9 facilities. You must participate in a sex offender  
10 specific treatment program and follow the rules and  
11 regulations of that program. The probation officer will  
12 supervise your participation in the program.

13           You must not view or possess any visual  
14 depiction including any photograph, film, video, picture  
15 or computer or computer-generated image or picture whether  
16 made or produced by electronic, mechanical or other means  
17 of sexually-explicit conduct.

18           You must not view or possess any visual  
19 depiction including any photograph, film, video, picture  
20 or computer or computer-generated image or picture whether  
21 made or produced by electronic or mechanical or other  
22 means of sexually explicit conduct that would compromise  
23 your sex offense specific treatment.

24           You must submit your person, property, house,  
25 residence, vehicles, papers and computers, other

1 electronic communications or data storage devices or media  
2 or office to a search conducted by the probation officer.  
3 Failure to submit to such a search may be grounds for  
4 revocation of release. You must warn any other occupants  
5 that the premises may be subject to searches pursuant to  
6 this condition and the probation officer may conduct the  
7 search under this condition only when reasonable suspicion  
8 exists that you have violated a condition of supervision  
9 and that the areas to be searched contain evidence of the  
10 violation. Any search must be conducted at a reasonable  
11 time and in a reasonable manner. You must pay any  
12 outstanding restitution and you must also pay any  
13 outstanding special assessment.

14 I will make the recommendation to the Bureau of  
15 Prisons that you be designated to FCI Butner or to another  
16 facility that has sex offender management and treatment  
17 program and that you be enrolled in those programs. I  
18 will impose no fine as based on lack of ability to pay.  
19 You are required to pay the special assessment of \$1,800.  
20 That's \$100 for each count.

21 Under Guideline 5G1.3(c), I will recommend that  
22 the sentences run concurrently to any anticipated sentence  
23 in the state offense reference in paragraph 182 of the  
24 presentence report. Based on the sentence imposed here, I  
25 see no value in departing from the standard of concurrent



1 sentences in that situation.

2 I will include the transfer of jurisdiction  
3 order in the judgment as requested and I believe that  
4 completes the specifics of the sentence.

5 Now, Mr. Thompson, I do want to say a few words  
6 to you. Your crimes were among the most heinous that we  
7 face in our society. You harmed the most vulnerable  
8 members of your society, young children. You committed  
9 unspeakable, disgusting and repulsive acts against them  
10 and you stole their innocence and childhood and caused a  
11 lifetime of pain. The fact that one of them was your  
12 daughter makes this crime even all the more revolting.

13 You may have thought that since the main victim  
14 in this was your child, you could get away with this,  
15 particularly given that one of the victim's grandmothers  
16 appears to have perversely supported you in this way, even  
17 enabled you and perhaps that in and of itself may be a  
18 crime.

19 But these children were never actually alone. A  
20 brave individual came forward and reported this conduct  
21 and law enforcement investigated.

22 As you know, the victims' mothers have now  
23 stepped forward to give their voice to their daughters'  
24 pain and their own shared pain as you heard today as well  
25 as was presented in victim impact letters.

1           And we as a community, we as a society, as a  
2 country have always stood with these children and stand  
3 with them now because these little girls, all little girls  
4 and boys in our community are our children, too. We are  
5 all our brother's keepers, our sister's keepers, our son's  
6 keepers and our daughter's keepers. We rise and fall as  
7 one community, as one nation.

8           And when someone engages in evil against our  
9 children, we must respond. We do so not through rough  
10 justice or retaliation. We do so through our justice  
11 system, with due process of law, with a fair trial before  
12 a jury of your peers. And having gone through that, the  
13 jury spoke loud and clear with its verdict.

14           And as the representative of our system of  
15 justice today, I tell you in no uncertain terms that your  
16 actions were evil, vile and despicable and can never be  
17 tolerated in America or anywhere in the world. As a  
18 result, you will spend the rest of your life in prison  
19 where you deserve to be.

20           If there was a higher punishment that we could  
21 offer, we likely would impose that as well. But that is  
22 all that we are empowered on this earth to impose. So  
23 that is the sentence that you will serve. With that, you  
24 may be seated.

25           Mr. Thompson, you generally have the right to

1 appeal your conviction and sentence subject to the waivers  
2 that you -- any waivers you may have made in the plea  
3 agreement. If there's a basis to appeal and you wish to  
4 do so, you must file the notice of appeal within 14 days  
5 of the entry of judgment.

6 If you request, the clerk will prepare and file  
7 a notice of appeal on your behalf. And if you cannot  
8 afford to pay the cost of appeal or for an appellate  
9 counsel, you can apply to have the Court waive the filing  
10 fee and appoint counsel to represent you on the appeal.

11 Is there anything further we need to discuss  
12 today from either side?

13 MS. O'MALLEY: Not from the government, Your  
14 Honor.

15 THE COURT: Anything from the defense?

16 MR. MERCER: No, Your Honor.

17 THE COURT: I do want to thank both the victim's  
18 mother who spoke today. I understand how difficult that  
19 was. But to participate in this proceedings in this way  
20 was very meaningful.

21 I also want to thank the other members of the  
22 public who have come today. As I stated, this is -- part  
23 of the -- one of the hallmarks of our justice system is  
24 that it's not simply an exercise by judges and lawyers.  
25 But the public participates whether in the open trials and

1 proceedings we have, whether through the jury system that  
2 was employed in this case or simply by having members of  
3 the public bear witness to our events. And so your  
4 presence is very meaningful and I thank you for that.

5 (Proceedings concluded.)  
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CERTIFICATE OF REPORTER

I, Lisa K. Bankins, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the sentencing in the case of the United States of America versus Kyle Stephen Thompson, Criminal Action Number TDC-17-00195, in said court on the 30th day of January, 2019.

I further certify that the foregoing 84 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 2nd day of April, 2019.

Lisa K. Bankins

Lisa K. Bankins  
Official Court Reporter

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<p><b>G</b></p> <p><b>gone [2]</b> 51/9 82/12</p> <p><b>good [7]</b> 2/10 2/11 2/14 2/14 39/1 44/5 55/17</p> <p><b>got [4]</b> 22/10 57/11 57/12 61/8</p> <p><b>government [26]</b> 1/11 2/24 2/25 3/9 3/16 6/6 6/25 10/6 14/17 34/14 37/18 40/8 42/17 43/3 43/24 48/15 53/12 58/24 65/6 65/16 66/24 67/1 69/25 74/23 75/3 83/13</p> <p><b>government's [2]</b> 2/22 5/8</p> <p><b>grandchildren [1]</b> 52/23</p> <p><b>granddaughter [1]</b> 47/20</p> <p><b>grandmothers [1]</b> 81/15</p> <p><b>grateful [1]</b> 51/1</p> <p><b>gratification [3]</b> 28/9 28/10 28/11</p> <p><b>great [2]</b> 50/25 57/16</p> <p><b>greater [7]</b> 55/24 67/14 69/2 69/11 72/15 75/16 77/11</p> <p><b>greatly [1]</b> 67/13</p> <p><b>Greenbelt [3]</b> 1/4 1/14 1/21</p> <p><b>groping [1]</b> 52/3</p> <p><b>ground [1]</b> 30/19</p> <p><b>grounds [2]</b> 30/7 80/3</p> <p><b>group [8]</b> 13/18 14/8 14/13 19/14 33/6 33/7 33/13 33/15</p> <p><b>grouped [7]</b> 12/2 21/3 32/21 32/24 33/9 34/2 76/1</p> <p><b>grouping [16]</b> 4/13 11/25 11/25 12/4 12/17 12/18 12/22 12/22 12/23 19/11 21/17 24/1 24/2 24/3 32/17 32/18</p> <p><b>groups [8]</b> 19/16 33/17 33/20 34/15 34/20 34/20 34/21 34/24</p> <p><b>Growing [1]</b> 44/10</p> <p><b>guess [12]</b> 14/20 14/24 15/13 16/3 18/5 18/19 26/22 27/3 36/18 41/3 60/2 60/3</p> <p><b>guidance [2]</b> 27/14 55/23</p> <p><b>guideline [17]</b> 8/19 15/8 18/18 19/4 19/23 25/8 26/23 32/21 32/25 35/7 35/9 35/11 54/14 72/7 72/17 74/7 80/21</p> <p><b>guidelines [26]</b> 14/1 18/6 18/13 18/14 26/4 26/25 27/2 27/11 30/24 34/16 35/5 42/25 43/2 43/17 54/13 60/16 63/5</p>	<p>63/10 68/14 68/18 69/1 69/1 69/10 74/8 74/9 77/2</p> <p><b>guilt [1]</b> 51/12</p> <p><b>guilty [3]</b> 2/17 7/2 72/1</p> <p><b>H</b></p> <p><b>habitability [1]</b> 65/5</p> <p><b>had [39]</b> 3/7 4/5 5/3 6/16 6/25 19/21 19/23 22/7 23/5 27/8 27/21 33/14 38/21 39/22 39/24 40/6 40/20 43/5 44/23 45/4 45/10 45/19 47/1 47/12 48/3 49/10 50/15 50/19 52/22 57/11 57/11 57/11 59/18 64/22 67/17 73/16 73/17 75/25 85/6</p> <p><b>hadn't [1]</b> 11/14</p> <p><b>hair [1]</b> 17/15</p> <p><b>hallmarks [1]</b> 83/23</p> <p><b>hand [1]</b> 34/10</p> <p><b>handed [1]</b> 51/19</p> <p><b>hands [2]</b> 38/12 44/16</p> <p><b>happen [6]</b> 24/3 38/17 44/13 48/3 64/13 66/4</p> <p><b>happened [8]</b> 38/3 38/10 39/20 44/18 45/23 46/12 48/3 59/18</p> <p><b>happening [3]</b> 44/11 49/10 49/11</p> <p><b>happens [1]</b> 7/17</p> <p><b>happy [2]</b> 10/9 59/25</p> <p><b>hard [3]</b> 61/14 61/15 75/12</p> <p><b>harm [19]</b> 12/2 12/5 12/20 13/7 19/25 20/12 20/17 22/4 22/21 23/2 23/7 23/18 32/19 32/22 33/18 56/19 73/13 73/18 74/13</p> <p><b>harmed [2]</b> 73/14 81/7</p> <p><b>harmless [1]</b> 54/25</p> <p><b>harmlessness [1]</b> 11/12</p> <p><b>harms [2]</b> 21/3 21/21</p> <p><b>has [39]</b> 4/13 7/2 13/20 15/11 15/25 16/13 29/6 34/14 36/7 36/24 37/12 38/15 38/22 39/22 39/22 41/9 41/9 42/15 42/20 47/14 49/20 50/7 51/3 51/9 52/12 52/15 53/12 53/23 54/21 57/18 57/20 58/8 59/15 70/14 71/21 73/25 74/3 75/3 80/16</p> <p><b>hasn't [2]</b> 36/19 60/14</p>	<p><b>have [114]</b></p> <p><b>haven't [6]</b> 15/16 30/16 39/14 39/18 60/3 62/3</p> <p><b>having [4]</b> 11/1 46/2 82/12 84/2</p> <p><b>HAYES [2]</b> 1/12 2/8</p> <p><b>he [73]</b> 6/13 17/14 29/7 29/9 29/11 29/12 29/13 29/14 29/16 29/18 29/19 29/21 29/21 29/22 37/6 37/11 37/12 37/20 38/15 38/18 38/21 38/21 38/23 39/9 39/11 39/13 39/16 40/6 40/6 40/9 40/14 40/19 41/9 41/12 42/2 42/3 42/19 43/25 45/16 45/21 48/4 50/5 50/22 52/13 52/14 52/16 52/22 55/4 55/5 56/25 57/2 57/2 58/8 58/10 58/10 58/11 59/2 59/8 59/15 59/16 59/19 59/20 59/25 67/21 67/25 69/16 72/25 73/5 73/8 73/14 74/1 74/3 74/20</p> <p><b>he'll [1]</b> 60/1</p> <p><b>he's [5]</b> 39/12 42/16 57/1 67/22 67/23</p> <p><b>headline [1]</b> 69/4</p> <p><b>health [2]</b> 65/5 74/4</p> <p><b>healthy [1]</b> 51/17</p> <p><b>hear [6]</b> 14/17 43/20 43/23 43/24 44/8 48/14</p> <p><b>heard [7]</b> 22/17 22/22 31/24 39/14 44/11 51/6 81/24</p> <p><b>hearings [1]</b> 52/1</p> <p><b>heartland [2]</b> 15/20 17/16</p> <p><b>heinous [3]</b> 49/8 73/22 81/6</p> <p><b>held [1]</b> 50/5</p> <p><b>help [4]</b> 46/6 47/3 48/18 51/25</p> <p><b>her [42]</b> 17/3 17/7 17/9 17/14 17/14 17/14 17/15 17/24 44/17 44/18 44/22 45/12 45/16 45/21 46/1 46/4 46/6 46/7 46/14 46/22 47/20 47/22 47/24 49/17 49/25 49/25 50/3 50/4 50/4 50/5 50/5 50/6 50/21 51/1 51/11 51/11 51/13 51/14 51/14 52/3 52/5 52/14</p> <p><b>her mommy [1]</b> 50/3</p> <p><b>here [36]</b> 2/4 2/15 6/10 7/20 8/11 8/16 10/2 10/14 11/3 11/7 11/14 12/2 16/13 17/2</p>
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<b>H</b>	34/3	80/24
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